

73708

REPORTER'S RECORD

VOLUME 18 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR.) IN THE DISTRICT COURT

Appellant)

)

VS.) HARRIS COUNTY, TEXAS

)

THE STATE OF TEXAS)

Appellee) 179TH JUDICIAL DISTRICT

TRIAL-GUILT/INNOCENCE

On the 6th day of October, 1999, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Mike Wilkinson, Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer transcription/stenograph machine.

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COURT OF CRIMINAL APPEALS

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1 (Jury is brought in and seated.)

2 THE COURT: Please be seated.

3 Mr. McClellan.

4 MR. MCCLELLAN: Your Honor, before we
5 start with the next witness, the State would offer into
6 evidence State's Exhibits 5 through 10, and 16 through
7 19, and 42, which has previously been exhibited to the
8 jury.

9 MR. HILL: No objection, Judge.

10 THE COURT: State's Exhibits 5 through 10,
11 16 through 19, and 42 are admitted. Call your next,
12 please.

13 MR. MCCLELLAN: State would call Dion
14 Holley.

15 THE COURT: Ladies and gentlemen, this
16 witness has previously been sworn.

17 Proceed, please.

18 DION HOLLEY,
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MCCLELLAN:

22 Q. Would you state your name for the record,
23 please?

24 A. Dion Holley.

25 Q. Okay. And Mr. Holley, how old are you?

5

1 Q. Okay. And who is that?

2 A. Kevin.

3 Q. Kevin Walter?

4 A. Yes.

5 MR. MCCLELLAN: At this time, Your Honor,
6 I offer into evidence State's Exhibit 86 and tender to
7 defense counsel for examination.

8 MR. HILL: No objection.

9 THE COURT: State's 86 is admitted.

10 Q. (BY MR. MCCLELLAN) You say you've known Kevin
11 Walter about ten years?

12 A. Yes.

13 Q. Did you go to school with Kevin Walter?

14 A. Yes.

15 Q. Did you know, back on December the 6th, 1998, a
16 person by the name of Terrence Gibson?

17 A. Yes.

18 Q. How long had you known Terrence Gibson?

19 A. About six years.

20 Q. Let me show you what's been introduced into
21 evidence as State's Exhibits 76. Is that Terrence
22 Gibson?

23 A. Yes.

24 Q. Did you live in the same neighborhood where
25 Terrence Gibson and Kevin Walter lived?

4

1 A. Twenty two.

2 Q. And where do you -- you live here in Harris
3 County?

4 A. Yes.

5 Q. How long have you lived in Harris County,
6 Texas?

7 A. All my life.

8 Q. Do you have any relatives in Sunset, Louisiana?

9 A. No.

10 Q. Any connection to Sunset, Louisiana?

11 A. No.

12 Q. Let me direct your attention back to December
13 the 6th of 1998. I want you to be sure and keep your
14 voice up, because there is going to be people going in
15 and out of the door. And you might want to make sure
16 the jury gets an opportunity to hear anything you have
17 to say. Back on December the 6th, 1998, did you know a
18 person by the name of Kevin Walter?

19 A. Yes.

20 Q. How long had you known Kevin Walter?

21 A. Ten years.

22 Q. Let me show you what's been marked as State's
23 Exhibit 86 and ask you if you can identify the person in
24 State's Exhibit 86?

25 A. Yes.

6

1 A. Yes.

2 Q. Did you know a person back on December the 6th
3 of 1998 by the name of Mary Carmouche?

4 A. Yes.

5 Q. Let me show you State's Exhibit No. 77. Is
6 that a photograph of Mary Carmouche?

7 A. Yes.

8 Q. And how long had you known Mary Carmouche?

9 A. About a year-and-a-half, a year.

10 Q. Okay. How had you come to know Mary Carmouche?

11 A. I met her at Chevron.

12 Q. Okay. And was she working at a Chevron?

13 A. Yes.

14 Q. Back on -- before December the 6th of 1998,
15 did you know or had you ever met a person by the name of
16 Charles Mamou, Jr.?

17 A. No.

18 Q. Had you ever known or met a person by the name
19 of Samuel Johnson?

20 A. No.

21 Q. You ever met a person by the name of Terrence
22 Dodson?

23 A. No.

24 Q. On December the 6th, 1998, in the afternoon,
25 can you tell the ladies and gentlemen what you were

7

1 doing?

2 A. Yes.

3 Q. Okay.

4 A. I was playing basketball behind the school.

5 Q. What school?

6 A. Bowie.

7 Q. And how many people were back there playing
8 basketball, approximately?

9 A. I couldn't tell you. Numerous people.

10 Q. While you were back there playing basketball,
11 was Terrence Gibson around that area at that time you
12 were playing basketball?

13 A. Yes.

14 Q. Was he also playing basketball?

15 A. No.

16 Q. Did there come a time when you met with Kevin
17 Walter on December the 6th, 1998?

18 A. Yes.

19 Q. And where were you when you met with him?

20 A. At the basketball court.

21 Q. Okay. And how did that meeting come about?
22 Did you approach him, or did he approach you?

23 A. He approached me.

24 Q. Okay. And did you have a conversation with
25 Kevin Walter there at the basketball court back on

8

1 December the 6th, 1998?

2 A. Yes.

3 Q. As a result of your conversation with Kevin
4 Walter, did you, while there at the basketball court,
5 talk on the phone, the cell phone, with anyone?

6 A. Yes, sir.

7 Q. And do you know the name of the person you
8 talked to?

9 A. Yes.

10 Q. And who was the person that you talked to on
11 the cell phone?

12 A. Chucky.

13 Q. And Chucky is also known as?

14 A. Mamou.

15 Q. Okay. What did you and Charles Mamou discuss
16 on the cell phone?

17 A. Well, I told him we could meet; because I
18 didn't want to talk on the phone.

19 Q. What were you going to meet about?

20 A. About him buying some drugs.

21 Q. What kind of drugs?

22 A. A kilo.

23 Q. Of?

24 A. Dope.

25 Q. What kind of dope?

9

1 A. I don't know.

2 Q. Marijuana?

3 A. Cocaine.

4 Q. All right. And did y'all agree to meet
5 someplace? --

6 A. Yes.

7 Q. -- in that conversation there?

8 A. Yes.

9 Q. And where did you agree to meet?

10 A. Northline parking lot.

11 Q. Now, how far is Northline parking lot from the
12 school where you were playing basketball?

13 A. Five to seven minutes.

14 Q. Okay. Now when you were at the basketball
15 court, how had you gotten there?

16 A. To Northline?

17 Q. No. How had you gotten to the basketball
18 court? Did you drive your car to the basketball court?

19 A. No.

20 Q. How did you get to the basketball court?

21 A. I walked.

22 Q. After discussing on the cell phone with Chucky
23 Mamou about meeting at Northline, had Terrence Gibson
24 been involved yet in the conversation?

25 A. Yes.

10

1 Q. Was he involved in it before you talked on the
2 cell phone or after you talked on the cell phone?

3 A. After.

4 Q. And did you talk -- you and Kevin Walter talk
5 with Terrence Gibson about this proposed meeting at
6 Northline?

7 A. Yes.

8 Q. At the time, how did Kevin Walter get to that
9 location, if you know, the location of the basketball
10 court?

11 A. He drove his car.

12 Q. So, after you set up this meeting at Northline
13 Mall with Charles Mamou, did y'all leave the basketball
14 court?

15 A. Did who leave the basketball court?

16 Q. Did you leave the basketball court?

17 A. Yes.

18 Q. How did you leave? What car? How?

19 A. Terrence went and got my mom's car. When he
20 got back, that's when me and Kevin left.

21 Q. How did Terrence go to get your mom's car?

22 A. Kevin took him.

23 Q. And your mom's car is what kind of a car?

24 A. Lexus.

25 Q. Let me show you what's been marked as State's

11

- 1 Exhibit No. 62. Is that your mom's car?
2 A. Yes.
3 Q. Okay. How was it that Terrence was going to
4 get your car at your mom's house?
5 A. He was a friend.
6 Q. Okay. So, I mean, Terrence went to get your
7 car; is that right?
8 A. Correct.
9 Q. Kevin took Terrence over to your house, and
10 they came back with Terrence driving your car or what?
11 A. Yes.
12 Q. And you stayed at the basketball court?
13 A. Yes.
14 Q. Why did you have Terrence go get your car?
15 Why was your car needed?
16 A. Because we was going to use my car to make it
17 seem like we had the money or we had the drugs that
18 Mamou wanted.
19 Q. So, your car is what kind of a car?
20 A. A Lexus.
21 Q. And does it have any special type of features?
22 A. Just rims.
23 Q. Rims are what? Not everybody knows what rims
24 are. What are rims?
25 A. Mags.

12

- 1 Q. Wheels?
2 A. Yeah, wheels.
3 Q. What color?
4 A. Chrome.
5 Q. All right. They cost extra money?
6 A. I'm not for sure.
7 Q. This was your mother's car, you say?
8 A. Yes.
9 Q. After you got your car back to the basketball
10 court, then where did y'all go from there?
11 A. From there?
12 Q. Yes.
13 A. We went to -- after we got back from where?
14 Q. Whenever you were at the basketball court, they
15 brought the Lexus back. Now you have the Lexus; and all
16 three parties, Kevin Walter, Dion Holley, and Terrence
17 Gibson, are at the basketball court, and there is two
18 cars?
19 A. We go to Northline.
20 Q. Okay. So you had one conversation with Charles
21 Mamou. Did you have any additional conversations with
22 him after the Lexus got there and before you got to
23 Northline?
24 A. No.
25 Q. Just that one conversation?

13

- 1 A. Yes.
2 Q. Had you set up what time you were going to
3 meet?
4 A. Yes.
5 Q. Do you recall what time it was that you agreed
6 to meet?
7 A. I'm not for sure.
8 Q. When you left the basketball court to go to
9 Northline, who was driving the Lexus?
10 A. I was.
11 Q. Was there anybody in the car with you?
12 A. Kevin.
13 Q. And where was Terrence?
14 A. He was in Kevin's car.
15 Q. And where was he going to go?
16 A. He was waiting till we get back.
17 Q. He was going to wait there at the basketball
18 court till you got back?
19 A. Yes.
20 Q. Did you and Kevin Walter drive to Northline?
21 A. Yes.
22 Q. And when you got to Northline, whereabouts did
23 you stop?
24 A. Close to Papa's Barbeque.
25 Q. Was the other car that you were going to meet

14

- 1 already there or not?
2 A. I'm not for sure.
3 Q. Was anyone talking on the telephone -- cell
4 phone with the other parties? How did they know what
5 you were going to be in or what?
6 A. I imagine Kevin told.
7 Q. You don't know?
8 A. No, not for sure.
9 Q. Did you meet up with another car?
10 A. Yes.
11 Q. What kind of car?
12 A. A red car. I think it was an Intrepid or
13 something.
14 Q. Let me show you what's been marked as State's
15 Exhibit No. 40. Does that look same or similar to the
16 car that you met up with?
17 A. Yes.
18 MR. MCCLELLAN: At this time, Your Honor,
19 the State would offer into evidence State's Exhibit No.
20 40 and tender to defense counsel for examination.
21 MR. HILL: No objection.
22 THE COURT: All right. State's 40 is
23 admitted.
24 Q. (BY MR. MCCLELLAN) When you met that red car
25 at Northline, how many people were in that red car, if

15

1 you recall?

2 A. I recall three or four people. I'm not for
3 sure.

4 Q. All right. Did you see the driver of the car,
5 the red car, at Northline?

6 A. No.

7 Q. Did you later see the driver of the red car at
8 other locations?

9 A. Yes.

10 Q. Did you see the defendant in the red car at
11 Northline?

12 A. Yes.

13 Q. And that is Charles Mamou?

14 A. Yes.

15 Q. Do you recognize Charles Mamou here in the
16 courtroom today?

17 A. Yes.

18 Q. Could you point him out and briefly describe
19 something he's wearing today?

20 A. Yes. He's wearing a suit, sitting next to the
21 guy right there.

22 MR. MCCLELLAN: Your Honor, may the record
23 reflect the --

24 THE COURT: Could you be a little more
25 specific, please?

17

1 Q. I mean, you saw in the red car?

2 A. Yes.

3 Q. Do you know if he was in the front seat or the
4 backseat?

5 A. He was in the backseat.

6 Q. Okay. Did you later learn -- come to know the
7 name of this person?

8 A. No.

9 Q. Okay.

10 THE COURT: For the record, that wasn't
11 identified.

12 MR. MCCLELLAN: It was identified as the
13 person in the backseat.

14 THE COURT: As an exhibit for the record?

15 MR. MCCLELLAN: State's Exhibit No. 88.

16 Q. (BY MR. MCCLELLAN) Do you recall whether there
17 was more than three people? I mean, there was a
18 driver; there was Charles Mamou. Was this person the
19 driver, State's Exhibit No. 88?

20 A. No.

21 Q. State's Exhibit No. 88, Charles Mamou?

22 A. No.

23 Q. State's Exhibit No. 88, though, is a person who
24 was in the red car?

25 A. Yes.

16

1 Q. (BY MR. MCCLELLAN) White male or black male?

2 A. The black guy right there.

3 THE COURT: It will. Thank you.

4 Q. (BY MR. MCCLELLAN) In addition to the --
5 was -- what position was Charles Mamou in the vehicle
6 that arrived, the red car?

7 A. He was in the backseat, I think behind the
8 driver.

9 Q. Charles Mamou was in the backseat behind the
10 driver?

11 A. I think. I'm not for sure, but I know he was
12 in the backseat.

13 Q. All right. Did you see anybody else get out of
14 the car there at Northline?

15 A. Yes.

16 Q. Did you later come -- well, did you later come
17 to know who that person was?

18 A. I don't know his name.

19 Q. Let me show you a photograph.

20 A. Yes.

21 Q. You recognize that person?

22 A. Yes.

23 Q. Okay. Was this the person you saw in the
24 backseat?

25 A. Yes.

18

1 Q. And got out of the red car?

2 A. Yes.

3 Q. Any other people in that car?

4 A. Yes.

5 Q. There was another person in that car?

6 A. Yes.

7 Q. And who was that?

8 A. The driver.

9 Q. Well, we said the driver. This person is
10 not -- State's Exhibit No. 88 is not the driver --

11 A. Correct.

12 Q. -- is that right?

13 A. Correct.

14 Q. He's not Charles Mamou?

15 A. Correct.

16 Q. We've taken care of two people?

17 A. Yes.

18 Q. He is somebody who was in the car?

19 A. Yes.

20 Q. In addition to those three people, the driver,
21 Charles Mamou, and State's Exhibit No. 88, was there
22 anyone else in the car?

23 A. No.

24 Q. How many people got out of the red car?

25 A. Two.

19

1 Q. Which people got out?

2 A. Charles Mamou and --

3 Q. State's Exhibit 88?

4 A. Yes.

5 Q. How many people got out of the car you were in?

6 A. Kevin and I.

7 Q. And where did y'all go?

8 A. In the parking lot.

9 Q. Okay. Were you between the cars?

10 A. Pretty much at the back between the cars.

11 Q. When Charles Mamou got out of the red car, did
12 he have anything in his hands?

13 A. Yes.

14 Q. What did he have in his hands?

15 A. Some kind of bag.

16 Q. Let me show you what's been introduced into
17 evidence as State's Exhibit No. 31. Have you ever seen
18 a bag that looked like this?

19 A. Yes.

20 Q. And where did you see a bag that looked like
21 this?

22 A. In Charles' hands.

23 Q. Where?

24 A. At the Papa's.

25 Q. Northline?

21

1 told him no, not right here.

2 Q. And what did he do with the bag, then, if you
3 know?

4 A. Or I think he handed it to the heavysset guy.

5 Q. The guy in State's Exhibit No. 88?

6 A. Yes.

7 Q. Okay. And what did he do with the bag?

8 A. He got in the car with it.

9 Q. Did y'all agree to meet at another location?

10 A. Yes.

11 Q. And where was that location?

12 A. Off Cavalcade.

13 Q. And why did you go to a location on Cavalcade?

14 A. Because Kevin said it wasn't safe there.

15 Q. Now, was the plan that Terrence Gibson was
16 going to be at that location?

17 A. Not at that location.

18 Q. I mean, by that location, meaning the Cavalcade
19 location?

20 A. Yes.

21 Q. So he wasn't waiting back at the basketball
22 court for you?

23 A. No.

24 Q. Was he at the Northline location, that you know
25 of?

20

1 A. Yes.

2 Q. What was your understanding of what was going
3 to happen at Northline?

4 A. That Mamou was going to trust Kevin Walter with
5 the money.

6 Q. How much money?

7 A. It was supposed to be \$20,000.

8 Q. \$20,000. Trust him with the money to do what?

9 A. To go get him some drugs.

10 Q. All right. Now had y'all planned when you
11 met -- when you drove to go to Northline, had y'all
12 planned to go somewhere else as opposed to doing the
13 deal at Northline?

14 A. Not at first.

15 Q. When you met at Northline, what conversation
16 did you have with Charles Mamou?

17 A. None.

18 Q. Okay. Who had the conversation? Kevin?

19 A. Kevin.

20 Q. And what did -- you say Charles Mamou had that
21 bag?

22 A. Yes.

23 Q. Did he give the bag to either of you there at
24 Northline?

25 A. He was fixing to hand it to Kevin; but Kevin

22

1 A. No.

2 Q. When you got to the Cavalcade location, did you
3 ever see Terrence Gibson or the car he was in, which
4 would be Kevin Walter's car?

5 A. No.

6 Q. It's your understanding he was supposed to be
7 there?

8 A. Correct.

9 Q. Now did Terrence Gibson have on -- in his
10 possession, a gun?

11 A. Yes.

12 Q. When you met at Cavalcade, did they follow you
13 or did you follow them? How did y'all get to
14 Cavalcade?

15 A. They followed us.

16 Q. And what type of location did you go to?

17 A. To a grocery store.

18 Q. Was it open or closed?

19 A. Closed.

20 Q. And where did y'all meet? Where did you all
21 meet there at Cavalcade, at the grocery store?

22 A. At Sing-On grocery store.

23 Q. Inside the grocery store?

24 A. No, outside.

25 Q. In the parking lot?

23

1 A. Yes.

2 Q. Whenever you got to that location, who got out
3 of your car?

4 A. Kevin and I.

5 Q. And who got out of the red car?

6 A. Mamou and the guy that's on the picture.

7 Q. State's Exhibit 88?

8 A. Yes.

9 Q. The heavyset guy?

10 A. Yes.

11 Q. What was discussed at that location?

12 A. That if they hand us the money, we was going to
13 get what they wanted.

14 Q. Did they agree to hand you the money?

15 A. No.

16 Q. Did Charles Mamou say why he wouldn't give you
17 the money?

18 A. He said because it was a heavyset guy with the
19 money. He was scared. Mamou said he wouldn't hand us
20 the money, because it was a heavyset guy's money and he
21 was scared we was going to rob and take the money.

22 Q. During -- how long a conversation did y'all
23 have there at the Cavalcade location?

24 A. About twenty or thirty minutes, I imagine.

25 Q. What's being said during these twenty or thirty

25

1 A. No.

2 Q. Did y'all have any dope that you were going to
3 be able to get?

4 A. No.

5 Q. Did you have anything to pretend was dope?

6 A. No.

7 Q. Nothing wrapped up like the bag of money to
8 pretend to be wrapped up like a kilo of cocaine?

9 A. No.

10 Q. When the meeting at Cavalcade ended, was it --
11 were y'all upset with each other?

12 A. Pretty much.

13 Q. Where did you and Kevin go from that location?

14 A. To the -- on Lockwood, to a gas station.

15 Q. Now during all this time we've talked about so
16 far, who has been driving the Lexus?

17 A. Me.

18 Q. Okay. And Kevin was your passenger?

19 A. Yes.

20 Q. You saw, at Cavalcade and at Northline, two
21 people get out of the red car. Did the driver ever get
22 out of the car at any time, either at Northline or
23 Cavalcade?

24 A. No.

25 Q. And during that period of time, did you ever

24

1 minutes? That's a long time to say yes and no.

2 A. Basically, the same thing.

3 Q. Were y'all trying to convince him to trust you
4 with the money?

5 A. Yes.

6 Q. Was anyone suggesting other alternative plans
7 of what to do?

8 A. No.

9 Q. How did the conversation -- how did the meeting
10 come to an end?

11 A. Mamou said that he would call Kevin later. He
12 was going to get the heavyset guy to trust him with the
13 money.

14 Q. There was a heavyset guy there outside during
15 all the conversation, or does he go back and get in the
16 car sometimes?

17 A. He went back and got in the car.

18 Q. At that Cavalcade location, did anyone have
19 that bag, State's Exhibit 31, outside of the car?

20 A. No.

21 Q. Did y'all, at any time, ask to see the money?

22 A. Yes.

23 Q. Ask to count the money?

24 A. Yes.

25 Q. Were you ever allowed to see the money?

26

1 get a good look at who the driver was?

2 A. No.

3 Q. After you -- when you met -- you say you went
4 over on Lockwood. Where did you go?

5 A. To the Chevron.

6 Q. And why did you go there?

7 A. I was getting some gas.

8 Q. Did you meet up with anybody at the Chevron
9 station?

10 A. Terrence.

11 Q. What did y'all do after the Chevron station?
12 Did you leave there? If so, where did you go?

13 A. We left there; and Terrence went and parked the
14 car, Kevin's car.

15 Q. Now what time are we talking about when we're
16 talking about the meeting at Northline and the meeting
17 at Cavalcade? What time of day?

18 A. It was close to getting dark at Northline; so,
19 I imagine it was about 7:00 o'clock, 7:30.

20 Q. We're talking December the 6th, so it gets dark
21 pretty early?

22 A. Yeah, may have been a little early. I just
23 know it's getting dark.

24 Q. By the time you were at Cavalcade, was it
25 already dark then?

27

1 A. Yes.

2 Q. Were there some telephone conversations or --
3 telephone conversations after you left Cavalcade with
4 Charles Mamou?

5 A. After I left Cavalcade?

6 Q. Were there conversations between people in your
7 car and people in Charles Mamou's, wherever he was?

8 A. I think he called when we was at the Chevron on
9 Lockwood.

10 Q. Did you talk to him, or did somebody else talk
11 to him?

12 A. Kevin.

13 Q. After -- you say you left Lockwood to go park
14 Kevin's car?

15 A. Yes.

16 Q. Where did you go to park Kevin's car at?

17 A. Kevin's house.

18 Q. Do you know where he lived?

19 A. On Bennington.

20 Q. And after you parked Kevin's car, then what did
21 y'all do?

22 A. After we parked Kevin's car, Terrence got in
23 the car with us.

24 Q. All right. Are you still driving?

25 A. Yes.

29

1 A. Yes.

2 Q. Do you have any idea what time you picked up
3 Mary Carmouche?

4 A. No.

5 Q. When you picked up Mary Carmouche, were you
6 still driving the car?

7 A. No.

8 Q. You switched?

9 A. Yeah, I switched.

10 Q. And who -- what was the seating arrangements
11 then, after picking up Mary Carmouche?

12 A. When we stopped at the stop sign, Kevin started
13 driving.

14 Q. Kevin was driving. Who was in the front
15 passenger seat?

16 A. Terrence.

17 Q. And who was in the back?

18 A. Me and Mary.

19 Q. And where were y'all going?

20 A. We was just riding. We was going to get
21 something to eat then.

22 Q. After picking up Mary Carmouche, did y'all get
23 any -- did y'all receive a call from Charles Mamou?

24 A. Yes.

25 Q. And who talked to him, if you know?

28

1 Q. So it's now you, Kevin, and Terrence Gibson in
2 the Lexus?

3 A. Yes.

4 Q. And what are y'all going to go do?

5 A. Now we was just riding around, because he say
6 he was going to call later.

7 Q. Did there come a point in time when you made a
8 call to a Mary Carmouche?

9 A. Yes.

10 Q. Do you remember what time that would have been?

11 A. No.

12 Q. Did you call her first, or did she call you?

13 A. She called me first, and I called her back.

14 Q. Now did you have a pager, as well as access to
15 a cell phone?

16 A. Yes.

17 Q. When she called you, did she call on your pager
18 or your cell phone?

19 A. Cell phone.

20 Q. As a result of that call, did you have an
21 occasion to go by where Mary Carmouche lived and pick
22 Mary Carmouche up?

23 A. Yes.

24 Q. At that time were you still waiting to hear
25 from Charles Mamou?

30

1 A. Kevin.

2 Q. As a result of that conversation -- and Kevin
3 is driving now?

4 A. Yes.

5 Q. As a result of that conversation, you go to a
6 different location?

7 A. Correct.

8 Q. Where do you go?

9 A. Bennigan's.

10 Q. Do you -- did you talk at any time in that
11 conversation with Charles Mamou?

12 A. No.

13 Q. Now the Bennigan's you went to was located
14 where, if you know?

15 A. I'm not for sure. Somewhere on the freeway,
16 side of the freeway, Southwest Freeway, I guess.

17 Q. Was it near any landmark that you know of,
18 anything that you can recognize and say, well, it's
19 near?

20 A. Astroworld.

21 Q. Okay. And who was driving the car to get to
22 that location?

23 A. Kevin.

24 Q. When you arrived at Bennigan's, is the car
25 you're going to meet already there?

31

1 A. No.

2 Q. So y'all have to wait for them to arrive?

3 A. Correct.

4 Q. Was -- did the defendant, Charles Mamou, arrive
5 in the same vehicle that you had seen him in at
6 Northline and Cavalcade?

7 A. Yes.

8 Q. And that's the vehicle shown in State's Exhibit
9 No. 40, the red car?

10 A. Yes.

11 Q. After their car arrived, where did y'all go, if
12 anyplace?

13 A. In the Bennigan's.

14 Q. Did you have any conversation yourself, with
15 Charles Mamou, outside before you went into Bennigan's?

16 A. Before, no.

17 Q. When you went into Bennigan's, how many people
18 went into Bennigan's?

19 A. Us four and two of them.

20 Q. Okay. It was Charles Mamou and who?

21 A. The driver.

22 Q. Of the red car?

23 A. Yes.

24 Q. At that point in time, did you get to see for
25 the first time who was driving the red car?

32

1 A. Yes.

2 Q. Let me show you what's been marked as State's
3 Exhibit No. 87 and ask you if you can identify that
4 person?

5 A. Yes.

6 Q. Is that person the driver of the red car?

7 A. Correct.

8 Q. Do you know what that person -- later come to
9 know what that person's name is?

10 A. Samuel.

11 Q. Samuel?

12 A. Yes.

13 Q. Is it Samuel Johnson? You just know him as
14 Samuel?

15 A. Yes.

16 Q. Did you know him by any other name, any
17 nickname?

18 A. No.

19 MR. MCCLELLAN: At this time, Your Honor,
20 we'd offer into evidence State's Exhibit 87 and tender
21 to defense counsel.

22 MR. HILL: No objection.

23 THE COURT: State's 87 is admitted.

24 Q. (BY MR. MCCLELLAN) So, Samuel was the driver
25 of the red car?

33

1 A. Yes.

2 Q. Now had you ever met Samuel in State's Exhibit
3 87 before that day?

4 A. No.

5 Q. Had you ever met the person in State's Exhibit
6 88 --

7 A. No.

8 Q. -- before that day?

9 A. No.

10 Q. Had you ever met the defendant before that day?

11 A. No.

12 Q. Why were y'all meeting at Bennigan's? Why were
13 you even meeting ever again?

14 A. Well, why were we meeting again?

15 Q. What purpose was going to happen at the
16 meeting? Why a meeting?

17 A. Because Mamou said the guy was going to trust
18 him with the money.

19 Q. Okay. And the guy that had been at Cavalcade
20 and at Northline, the guy in State's Exhibit No. 88, was
21 he present at Bennigan's?

22 A. No.

23 Q. You never saw him?

24 A. No.

25 Q. When you go into Bennigan's, do y'all order

34

1 something to eat?

2 A. Yes.

3 Q. Does Charles Mamou or Samuel order anything to
4 eat?

5 A. No.

6 Q. Do you know how long you may have been at
7 Bennigan's?

8 A. I'm not for sure.

9 Q. Fifteen minutes, thirty minutes, forty-five
10 minutes, an hour? Do you have an estimate?

11 A. Thirty minutes, I imagine. I'm not for sure.

12 Q. Now during the time you're at Bennigan's, did
13 you ever have an occasion to go outside of Bennigan's?

14 A. Yes.

15 Q. Did you go by yourself or with someone?

16 A. With someone.

17 Q. And who was that?

18 A. Mamou.

19 Q. All right. And when you went out -- why did
20 y'all go outside?

21 A. He called me outside and wanted to -- say he
22 wanted to ask me something.

23 Q. So what did he ask you when you got outside?

24 A. Asked me could I get it for a cheaper price.

25 Q. Get what for a cheaper price?

35

- 1 A. The drugs.
2 Q. What did you tell him?
3 A. I told him no. I say, We can go talk to Kevin.
4 I say, We got to talk about that together.
5 Q. At any point in time, did Charles Mamou ask to
6 see the drugs?
7 A. Yes.
8 Q. Did he ask to see the drugs then when you were
9 outside of Bennigan's?
10 A. Yes.
11 Q. What did you -- did you show him the drugs?
12 A. No.
13 Q. What did you tell him?
14 A. I ain't saw no money.
15 Q. You wanted to see the money before you show him
16 the drugs?
17 A. Yes.
18 Q. Prior to -- let's go back to Cavalcade and
19 Northline. Had Charles Mamou ever asked to see the
20 drugs then?
21 A. Yes.
22 Q. What was your answer to him then?
23 A. Same thing.
24 Q. Need to see the money?
25 A. Yes.

36

- 1 Q. Now had your story been to him before, Give us
2 the money; we'll go get the dope?
3 A. Yes.
4 Q. At this point in time, when you're at
5 Bennigan's, did y'all pretend to already have the dope?
6 Tell me yes or no.
7 A. No.
8 Q. Still going to have to go get it?
9 A. Yes.
10 Q. Did you ever tell Charles Mamou that you had
11 the dope there inside the car somewhere?
12 A. No.
13 Q. Other than asking you if he could get it for a
14 cheaper price, did y'all talk about anything else
15 outside?
16 A. No.
17 Q. At the time at Bennigan's, did you ever see
18 State's Exhibit No. 31, the bag?
19 A. No.
20 Q. Did you and Mr. Mamou go back inside of
21 Bennigan's?
22 A. Correct.
23 Q. Did anybody else leave to go outside after
24 that?
25 A. He left.

37

- 1 Q. He, being?
2 A. Mamou.
3 Q. And did he get anything from anybody before he
4 left?
5 A. The car keys.
6 Q. Who did he get those from?
7 A. Samuel.
8 Q. Did he say where he was going?
9 A. He say he was going to talk to Big Boy.
10 Q. About?
11 A. About giving him the money.
12 Q. How long was he gone, if you know?
13 A. Not long; about twenty minutes.
14 Q. Twenty minutes is a pretty long time.
15 A. About twenty minutes.
16 Q. Okay. Did he come back?
17 A. Yes.
18 Q. Did you have any conversation with him after he
19 came back?
20 A. No, not by myself.
21 Q. Well, were you present during any conversation
22 where you could hear what Mr. Mamou said?
23 A. Yes.
24 Q. What did he say?
25 A. Big Boy gave him the money.

38

- 1 Q. So, did y'all decide to leave Bennigan's?
2 A. Yes.
3 Q. And go where?
4 A. We was following them.
5 Q. Okay. Now who was driving when you left
6 Bennigan's?
7 A. Sammy.
8 Q. And that would have been the red car?
9 A. Yes.
10 Q. And then Mamou was a passenger?
11 A. Yes.
12 Q. Who was driving the Lexus?
13 A. Kevin.
14 Q. Who was in the front seat of the Lexus?
15 A. Terrence.
16 Q. And who was in the backseat?
17 A. Me and Mary.
18 Q. Leaving Bennigan's, in the backseat, who is
19 behind the driver?
20 A. Mary.
21 Q. And you're behind Gibson?
22 A. Yes.
23 Q. When you leave Bennigan's, do you recall where
24 you first went to, based on your recollection?
25 A. To some buildings.

39

1 Q. When you went to some buildings, did they stop
2 their car?

3 A. Yes.

4 Q. Where about did they stop their car?

5 A. In the parking lot.

6 Q. Now is this parking lot lit or dark or what?

7 A. It was lit.

8 Q. And is your vehicle that you're in also stopped
9 at that location?

10 A. Yes.

11 Q. How far a distance was there between your
12 vehicle, the Lexus, and the red car that was occupied by
13 the defendant, Charles Mamou?

14 A. A pretty good piece.

15 Q. Okay. Several car lengths?

16 A. Yes.

17 Q. Who got out of your car?

18 A. Terrence and I.

19 Q. And who got out of the red car?

20 A. Mamou.

21 Q. And did y'all meet there in the parking lot?

22 A. Yes.

23 Q. And what was said?

24 A. It was said, like, not right here. Let's move
25 down the street.

41

1 A. Yes.

2 Q. Did y'all stop behind them?

3 A. They -- his car turned around.

4 Q. Y'all stopped behind them first, I assume?

5 A. Yes.

6 Q. Their car turned around and does what?

7 A. And was facing our car.

8 Q. Anybody say why they were doing that?

9 A. Not that I recall.

10 Q. And what did you do? Did you get out of the
11 car?

12 A. No.

13 Q. Who got out of your car first?

14 A. Terrence.

15 Q. Did you see anybody get out of the red car?

16 A. Yes.

17 Q. Who?

18 A. Mamou.

19 Q. Did the driver of the red car ever get out?

20 A. No.

21 Q. Did you ever get out?

22 A. Yes.

23 Q. Where did Terrence -- where did Charles Mamou
24 go after he got out of the car?

25 A. To the back of the -- back of our car.

40

1 Q. And who said that?

2 A. Mamou.

3 Q. Now they're the ones that had stopped, and
4 y'all stopped in relation to them. Did you ask him, why
5 not right here?

6 A. No.

7 Q. Did he offer any explanation?

8 A. No.

9 Q. So, what did you do then?

10 A. Followed him down the street.

11 Q. Did you get back in the car?

12 A. Yes.

13 Q. Where did you next go after leaving the parking
14 lot around the buildings?

15 A. To some street not too far from there.

16 Q. And what were the conditions at this street?

17 A. Just a long street with basically nothing on
18 it.

19 Q. All right. Any streetlights?

20 A. Very few.

21 Q. Was it dark?

22 A. Pretty much.

23 Q. Were there any buildings on either side?

24 A. No.

25 Q. And did their car stop?

42

1 Q. To the back of the Lexus?

2 A. Correct.

3 Q. Where did Terrence go?

4 A. To the back of the Lexus.

5 Q. Were either of the hoods of the car raised?

6 A. No.

7 Q. Was there talk about, let's act like we're
8 giving a boost; and if somebody comes by, we'll be able
9 to give an explanation?

10 A. No, not then.

11 Q. When then?

12 A. After we had got shot.

13 Q. Okay. Now when you get out of the car, where
14 do you go?

15 A. Toward Terrence and Mamou.

16 Q. Terrence Gibson and Charles Mamou are at the
17 back of the Lexus?

18 A. Correct.

19 Q. And you get out of -- you're in the right-hand
20 passenger side -- well, you're in the passenger side of
21 the rear of the vehicle?

22 A. Correct.

23 Q. You get out and go back in the direction where
24 they're at?

25 A. Correct.

43

1 Q. Do you hear them discussing things?

2 A. I didn't hear them.

3 Q. Pardon?

4 A. I didn't hear them discussing things.

5 Q. All right. Do you go back there and stand then
6 for a period of time while they're back there by the
7 Lexus?

8 A. At no time.

9 Q. Pardon?

10 A. At no time.

11 Q. You get out of the car and do what?

12 A. Go to the back where Terrence and Mamou were.

13 Q. All right. And are they there and you're
14 there?

15 A. Yes.

16 Q. All three of you?

17 A. Yes.

18 Q. Is there a discussion about the money or about
19 the dope?

20 A. Well, I just walked up to tell them this right
21 here ain't no good spot, and I was on my way back to the
22 car.

23 Q. What happened?

24 A. As I was on my way to the back of the car, I
25 heard a gunshot.

45

1 A. Yes.

2 Q. Did you hear anything happening after the
3 gunshots stopped?

4 A. I heard the car leaving.

5 Q. And was it before or after the cars had left
6 that you start back towards the street?

7 A. After the cars left.

8 Q. And after you get back to the street, where do
9 you go?

10 A. To Terrence.

11 Q. And where -- is Terrence on the street?

12 A. Yes.

13 Q. Is he standing or laying down?

14 A. Laying down.

15 Q. And when you get to Terrence, do you know
16 where -- at that moment -- where Kevin Walter is?

17 A. No, not right then.

18 Q. All right. When you get to Terrence, is
19 Terrence still alive?

20 A. Yes.

21 Q. Do you see a gun near Terrence?

22 A. No.

23 Q. Are you able to -- is Terrence able to talk?

24 A. He mumbled a couple of words.

25 Q. Can you describe his condition? Was -- how

44

1 Q. You heard a gunshot. What did you do?

2 A. I ran.

3 Q. What direction did you run?

4 A. Toward the field.

5 Q. When you ran towards the field, what happened?

6 A. I kept running. I heard a gunshot.

7 Q. And then what happened?

8 A. And I heard some more gunshots. And then I was
9 shot.

10 Q. Where were you shot?

11 A. In the arm.

12 Q. Can you show the ladies and gentlemen of the
13 jury where in your arm you were shot?

14 A. Yes.

15 Q. That's fine. After you were shot in the arm,
16 where were you in the field? How far were you away?
17 Do you know?

18 A. A pretty good piece. I don't know.

19 Q. After the shot that was fired that hit you, did
20 you hear anymore gunshots?

21 A. Yes.

22 Q. Were you hit anymore times?

23 A. No.

24 Q. Did you come back towards the location where
25 you had been after the gunshots stopped?

46

1 did he physically look?

2 A. Like he was -- like his eyes was going to the
3 back, back of his head.

4 Q. Did you say anything to Terrence Gibson?

5 A. Yes.

6 Q. What did you say to him?

7 A. I asked him was he going to make it.

8 Q. Did he respond?

9 A. He mumbled a few words.

10 Q. After that where did you go?

11 A. I turned around and looked down. I saw Kevin
12 laying on the ground.

13 Q. And how far away was Kevin from where Terrence
14 was?

15 A. A nice little amount of length.

16 Q. And did you see a gun then?

17 A. No.

18 Q. Did you go up and talk to Kevin?

19 A. Yes.

20 Q. Now is this before anybody else has arrived at
21 the location?

22 A. Yes.

23 Q. And what did you do then?

24 A. I asked Kevin was he going to make it.

25 Q. And did he respond?

47

1 A. Yes.

2 Q. Did you stay there where he was, or did you go
3 back to where Terrence was?

4 A. I moved over a little bit away from Kevin.

5 Q. All right. At some point in time, did some
6 people arrive at the location?

7 A. Yes.

8 Q. Do you know who those people were?

9 A. No.

10 Q. Do you know what kind of vehicle they were in?

11 A. Truck, some kind of truck.

12 Q. Did you talk -- how did you -- where were you
13 when you saw them? Were you close to them or a little
14 ways away?

15 A. When I talked with them?

16 Q. No. When you first saw the truck stop, where
17 were you in relation to where Kevin Walter was?

18 A. Just a couple of steps away from Kevin.

19 Q. Okay. And did you see one of those guys pick
20 up a gun?

21 A. Yes.

22 Q. Had you not seen the gun before then?

23 A. No.

24 Q. Were you trying to go towards the gun to get
25 the gun?

48

1 A. No.

2 Q. Were you experiencing pain at this point in
3 time?

4 A. Yes.

5 Q. Can you tell us how you were acting, as far as
6 hollering? What were you doing?

7 A. Yeah, I was hollering.

8 Q. After the guy picked up the gun, did he talk
9 with you as to what happened?

10 A. Yes.

11 Q. Do you remember who talked to you? I mean, how
12 many people were stopping?

13 A. It was two.

14 Q. Did they both talk to you or just one?

15 A. I'm not for sure.

16 Q. Did you tell either -- did you tell one of the
17 first two people who arrived on the scene who were in
18 the truck -- did you tell them that, what had happened?

19 A. Not the truth.

20 Q. But did you tell them a story about what had
21 happened?

22 A. Yes.

23 Q. What did you tell them had happened?

24 A. I told them we was trying to help somebody, and
25 they robbed us for the car.

49

1 Q. After they arrived, did a Houston Police
2 Officer arrive while the ambulance was treating you, if
3 you recall?

4 A. I'm not for sure.

5 Q. Well, regardless of who it was, did you tell
6 anybody there while you were at the scene, on the street
7 where you were shot, the type of car that you were in?

8 A. No.

9 Q. Did you give them a description of the car so
10 they could -- you don't recall that?

11 A. No.

12 Q. You tell them the type of car that the other
13 people were in?

14 A. No.

15 Q. Did you tell them about Mary being missing?

16 A. Yes.

17 Q. And you told them Mary was missing, but you
18 didn't tell them anybody had a car?

19 A. I told them they drove off in a car. I don't
20 remember telling them what kind of car.

21 Q. Did you use the name Mary, or did you just say
22 a girl?

23 A. Mary.

24 Q. Okay. You don't recall who you told this to?

25 A. No.

50

1 Q. What hospital were you taken to?

2 A. Ben Taub.

3 Q. When you were taken to Ben Taub Hospital, were
4 you listed at Ben Taub Hospital under your name or under
5 another name?

6 A. My name.

7 Q. Do you know whether or not they listed you
8 under another name other than your name?

9 MR. HILL: Judge, I'm going to object to
10 anymore leading.

11 THE COURT: Anymore leading? Don't lead
12 your witness in the future.

13 Q. (BY MR. MCCLELLAN) Do you know if your medical
14 records reflect that you were checked in under another
15 name for your protection?

16 A. No.

17 MR. HILL: I object to the suggestion, for
18 his protection, Judge.

19 THE COURT: Well, he didn't know anyway.
20 The answer was no.

21 MR. HILL: Okay.

22 Q. (BY MR. MCCLELLAN) When you -- you say you
23 went to Ben Taub Hospital?

24 A. Correct.

25 Q. And did you require surgery?

51

1 A. No.

2 Q. They didn't do any surgery on your arm?

3 A. Yeah, they did.

4 Q. Do you know what required surgery means? Did
5 they have surgery on your arm?

6 A. Yes.

7 Q. Okay. More than one time or one time?

8 A. One time.

9 Q. During the time that you were in the
10 hospital -- now, this occurred -- it started out on
11 December the 6th, did it not? Do you know what time it
12 was when you arrived at the hospital? Do you have any
13 idea what time it was?

14 A. No.

15 Q. That next day while you were in the hospital,
16 did some police officers come by to talk to you?

17 A. Yes.

18 Q. And when they -- did they ask you what
19 happened?

20 A. Yes.

21 Q. And did you lie to them?

22 A. Yes.

23 Q. Why?

24 A. Because I wasn't for sure if I was getting in
25 trouble or not.

53

1 A. For the same reason.

2 Q. Well, they told you, did they not, that they
3 weren't there to look into any type of case other than a
4 homicide? They weren't there to try to make any case
5 on you?

6 A. That's correct.

7 Q. You didn't believe them?

8 A. No.

9 Q. At any point in time, did you ever tell the
10 police a true story about what happened?

11 A. No.

12 Q. And why did you never tell them the truth of
13 what happened? Same reason? --

14 A. Yes.

15 Q. -- we have talked before? --

16 A. Correct.

17 Q. -- several times?

18 A. Correct.

19 Q. Are you still suspicious about whether or not
20 you may get in trouble?

21 A. It don't matter right now.

22 Q. Have you and I ever been out to the scene to go
23 through the scene?

24 A. No.

25 Q. Do you know the exact location of where the

52

1 Q. Did you -- so the time they first came to talk
2 to you, you never told them the truth about what
3 happened?

4 A. That's correct.

5 Q. At that time, did you tell them what kind of
6 car it was, or do you recall telling anybody what type
7 of vehicle?

8 A. If I did, I don't remember that.

9 Q. And did they ask you about your relationship
10 with Mary Carmouche?

11 A. Yes.

12 Q. And did you lie to a certain extent about that
13 relationship?

14 A. I told them she was my friend.

15 Q. Did you ever tell them you barely knew her?

16 A. No.

17 Q. Did the police come back at a later date and
18 talk to you again?

19 A. Yes.

20 Q. And were you just as uncooperative the second
21 time they came as you were the first?

22 A. Yes.

23 Q. And did you continue to tell them lies?

24 A. Yes.

25 Q. And why?

54

1 scene is?

2 A. No.

3 Q. Do you know with any degree of certainty what
4 street you were on or where the location exactly is?

5 A. I don't know exactly.

6 Q. All right. The location where you were shot,
7 wherever that may be, do you know whether your car that
8 you were in was pointed north, south, east, west, you
9 know, any of those type of situations?

10 A. It was facing north.

11 Q. How do you know north? You just know direction
12 or what?

13 A. Yes, I know the north.

14 Q. Have you ever, yourself, been out to that
15 location since December the 6th, 1998?

16 A. No.

17 Q. Did you, yourself, know how to get to the
18 Bennigan's that y'all met at?

19 A. No.

20 Q. Did Kevin know how?

21 A. Yes.

22 Q. At the time you picked up Mary Carmouche from
23 her house, did she know about all the goings on, what
24 happened prior to her picking you up, such as your
25 discussion doing a dope deal, et cetera?

55

1 A. Not before I picked her up.

2 Q. When you went to Bennigan's, did she know there
3 was some deal that y'all were trying to do about getting
4 somebody's money for dope?

5 A. Yes.

6 Q. Was she a party to this? Was she involved in
7 trying to do this?

8 A. No.

9 Q. The driver of the red car, Samuel, did he ever
10 have any discussions in your presence or with you or
11 anyone else in your presence concerning, you know, the
12 drug deal; how it's going to go down, who was going to
13 do what, any of that?

14 A. No.

15 Q. And the only time you saw him was whenever he
16 got out of the car at Bennigan's and went inside?

17 A. Correct.

18 Q. I don't know whether I asked you this or not:
19 How long had you known Mary Carmouche as of December the
20 6th, 1998?

21 A. Repeat that again.

22 Q. How long had you known Mary Carmouche?

23 A. I know her a total of about a year-and-a-half
24 maybe.

25 MR. MCCLELLAN: I'll pass the witness,

57

1 Q. Let me ask you: I'd like to start my
2 questioning by pointing out to you if there is anything
3 that I ask you, if there is a question that I ask you
4 that you don't understand, please tell me to stop and
5 repeat it or rephrase it. Okay?

6 A. Okay.

7 Q. All right. Let's talk a little bit about the
8 relationship that you had with several people involved
9 in this case, starting with Kevin Walter. You've known
10 Kevin for a good, long time, right?

11 A. Correct.

12 Q. Did you grow up together in the same
13 neighborhood?

14 A. Yes.

15 Q. Go to school together?

16 A. Yes.

17 Q. Would you consider yourself a good friend of
18 Kevin Walter?

19 A. Yes.

20 Q. Do you maintain that friendship even to today's
21 date?

22 A. Correct.

23 Q. What type of things would you and Kevin do
24 together as friends?

25 A. We shot pool together.

56

1 Your Honor.

2 MR. HILL: May we approach for the a
3 moment, Judge?

4 THE COURT: Yes.

5 (Off-the-record discussion.)

6 THE COURT: Ladies and gentlemen, please
7 go back in the jury room for a couple of minutes.

8 (Brief recess.)

9 (Jury is brought in and seated.)

10 THE COURT: When we recessed, ladies and
11 gentlemen, the State had passed this witness.

12 Proceed, please.

13 MR. HILL: Thank you.

14 CROSS-EXAMINATION

15 BY MR. HILL:

16 Q. Mr. Holley, my name is Wayne Hill. You and I
17 have never met before, correct?

18 A. Correct.

19 Q. We've never spoken on the phone about this
20 case? You and I have never spoken on the phone?

21 A. Correct.

22 Q. In fact, you've never spoken to anybody that
23 was a defense investigator or anybody connected with the
24 defense of Mr. Mamou's case, correct?

25 A. Correct.

58

1 Q. What else?

2 A. Basically, that's it.

3 Q. Hang around together?

4 A. From time to time.

5 Q. Do you socialize with one another?

6 A. Yeah, we have.

7 Q. All right. Would he ever play basketball with
8 you?

9 A. No.

10 Q. He wasn't much of a basketball player?

11 A. No.

12 Q. Who would you play basketball with on those
13 courts?

14 A. Who would I play basketball with?

15 Q. They're just pickup games?

16 A. Yes.

17 Q. So, remind me whether or not Terrence Gibson
18 would play basketball.

19 A. Yes.

20 Q. How long have you been knowing Terrence Gibson?

21 A. Five or six years.

22 Q. So, both Terrence Gibson and Kevin Walter are
23 people that you've known for a long time?

24 A. Correct.

25 Q. Would you also consider Terrence Gibson, when

59

- 1 he was alive, a good friend?
2 A. Correct.
3 Q. What type of things would you do with Terrence?
4 A. Shoot pool, play basketball.
5 Q. All right. Did you socialize with him kind of
6 on the same terms that you did with Kevin Walter?
7 A. No, more.
8 Q. You were a little closer to Terrence Gibson
9 than you were to Kevin Walter?
10 A. Correct.
11 Q. At the time of his death, do you know how old
12 Terrence Gibson was?
13 A. Twenty-one, I imagine.
14 Q. Back in December of last year, how old were
15 you?
16 A. Twenty-two.
17 Q. Do you know how old Kevin was back then?
18 A. No.
19 Q. He was a little older than you?
20 A. Yes.
21 Q. Let's talk a little bit about the relationship
22 you had with Mary Carmouche. The State asked you
23 whether or not you lied to the police when they asked
24 you about the circumstances of this case, and you
25 admitted lying to the police.

60

- 1 A. Correct.
2 Q. And you've always lied to the police about the
3 case?
4 A. Correct.
5 Q. You've never given them the truth about this
6 case?
7 A. Correct.
8 Q. You've spoken to a lawyer about your
9 involvement in this case?
10 A. No.
11 Q. You know Cheryl Irvin?
12 A. Yes.
13 Q. Is she an attorney?
14 A. Yes.
15 Q. Have you spoken to her about this case?
16 A. No.
17 Q. You haven't spoken to Cheryl at all?
18 A. No, about this case, no.
19 Q. About your role as a potential witness in this
20 case?
21 A. No.
22 Q. She never talked to you, or you've never said
23 anything to her regarding the fact that you're going to
24 appear in the 179th District Court and give testimony?
25 A. That's my mother's friend. My mother may have.

61

- 1 Q. But you've met Cheryl Irvin and spoken to her,
2 haven't you?
3 A. Correct.
4 Q. In fact, are you of the opinion, personally,
5 that you're not in any trouble, that the decision has
6 been made that you're not going to be prosecuted for
7 anything?
8 A. I'm not for sure.
9 Q. Well, have you spoken to police officers when
10 they talked to you?
11 A. When?
12 Q. Back when they visited with you in the hospital
13 initially?
14 A. Yes.
15 Q. And were you given assurances that you would
16 not be prosecuted?
17 A. No.
18 Q. When did you first meet Mary Carmouche?
19 A. When did I first meet her?
20 Q. Yes.
21 A. Approximately a year-and-a-half ago.
22 Q. Okay. How old would she have been a
23 year-and-a-half ago?
24 A. I'm not for sure.
25 Q. Would she have been around fifteen years old,

62

- 1 sixteen years old?
2 A. Yes.
3 Q. Was she still going to high school at the time?
4 A. Yes.
5 Q. Were you in high school back a year-and-a-half
6 ago?
7 A. No.
8 Q. And let me clarify something. You're saying
9 you knew her for a year-and-a-half. That was a
10 year-and-a-half before December 6th of 1998, correct?
11 A. Correct.
12 Q. So it would go back to sometime in 1996 when
13 you first met her?
14 A. Correct.
15 Q. How old were you in 1996?
16 A. 1996?
17 Q. Uh-huh.
18 A. About nineteen.
19 Q. Okay. Were you enrolled in school at that
20 time?
21 A. No.
22 Q. How far did you go in school?
23 A. I completed the 11th.
24 Q. Are you currently employed?
25 A. No.

63

1 Q. All right. When is the last time you had a
2 job?

3 A. Been three or four years ago.

4 Q. All right. What have you done to support
5 yourself in the last three or four years?

6 A. I work with my father and uncle part-time.

7 Q. Doing what?

8 A. Landscaping and hauling cars.

9 Q. Are any of your family members in the courtroom
10 today?

11 A. Yes.

12 Q. Who's here with you?

13 A. My father, mother.

14 Q. Were you talking to your mom and dad during the
15 break?

16 A. Yes.

17 Q. Have you told your mother and father prior to
18 today's court appearance your involvement in this case?

19 A. Yes.

20 Q. You told them everything?

21 A. Yes.

22 Q. Did you tell them the truth?

23 A. Yes.

24 Q. And how many times have you and Kevin Walter
25 spoken to one another since December 6th of 1998?

64

1 A. We haven't spoken.

2 Q. You're very good friends with him?

3 A. Yes.

4 Q. Even to today's date?

5 A. Yes.

6 Q. Are you telling this jury that you and Kevin
7 Walter have not -- let me finish my question, please.
8 Are you telling this jury that you and Kevin Walter have
9 not spoken with one another about the circumstances that
10 occurred back on December 6th?

11 A. That's correct.

12 Q. Have you gotten together with Kevin Walter
13 since December 6th of 1998?

14 A. No.

15 Q. Haven't seen him at all?

16 A. Yes, I saw him.

17 Q. Where did you see him?

18 A. Driving down the street.

19 Q. Did you wave to him?

20 A. Yes.

21 Q. When would that have been?

22 A. I'm not for sure.

23 Q. Okay. Has Kevin attempted to contact you?

24 A. No.

25 Q. Do you have a written statement with the police

65

1 department about what occurred on the evening of
2 December 6th of 1998?

3 A. No.

4 Q. You refuse to give a written statement to them?

5 A. That's correct.

6 Q. When the police came to see you at the
7 hospital -- you were at Hermann Hospital, correct?

8 A. No.

9 Q. Ben Taub?

10 A. Correct.

11 Q. Sorry. Were you given your legal warnings?

12 A. My legal warnings, meaning what?

13 Q. You have a right to remain silent; anything you
14 tell us can be used against you; those type of things?

15 A. I don't recall. Probably so.

16 Q. Probably so?

17 A. I don't know.

18 Q. So, what kind of relationship did you have with
19 Mary Carmouche?

20 A. We was friends.

21 Q. Just friends?

22 A. Just friends.

23 Q. You did not consider her your girlfriend?

24 A. My friend.

25 Q. So is the answer, no, she was not my

66

1 girlfriend?

2 A. No, she's not my girlfriend.

3 Q. And do you recall telling the detectives when
4 they came to see you in the hospital that you barely
5 knew her?

6 A. I didn't tell them that.

7 Q. Okay. Do you know of a reason why a detective
8 would say something like that?

9 A. No, I don't.

10 Q. What would you and Mary, as friends, do
11 together?

12 A. Barely nothing but talk.

13 Q. About what?

14 A. On the phone.

15 Q. Okay. What type of things would you have in
16 common that you would talk about?

17 MR. MCCLELLAN: Your Honor, I object to
18 the relevance.

19 THE COURT: Sustained at this point.

20 Q. (BY MR. HILL) How much older were you than
21 Mary?

22 A. Three or four years older.

23 Q. Had you ever met her parents?

24 A. No.

25 Q. When you picked her up on December 6th of 1998,

67

1 what location was she at?

2 A. She was on Jay Street.

3 Q. Okay. Is that where she lived?

4 A. Yes.

5 Q. She lived there with her parents?

6 A. Correct.

7 Q. As you and Kevin are talking about Charles
8 Mamou, what is the first thing that you're telling your
9 friend, Kevin Walter, about this proposed drug
10 transaction?

11 MR. MCCLELLAN: I would request he put
12 this question in the context of a time frame.

13 THE COURT: All right.

14 Q. (BY MR. HILL) Let me ask you this: When is
15 the first time you're talking to your friend, Kevin
16 Walter, about doing some type of drug deal with Charles
17 Mamou?

18 A. When he came to the park.

19 Q. All right. Are you saying, then, that you
20 never had any meeting with Mr. Mamou prior to December
21 6th of 1998?

22 A. That's correct.

23 Q. Did you ever go off to the Shoney's on the 610
24 Loop over near Astroworld?

25 A. No.

68

1 Q. What did you first say to Kevin Walter on
2 December 6th of 1998?

3 A. About what?

4 Q. About getting together to have a plan to take
5 some money from somebody?

6 A. He came to me with a plan.

7 Q. All right. And you were at the basketball
8 court, just playing a pickup game?

9 A. Playing a game of basketball, correct.

10 Q. About what time of the day was that?

11 A. About 5:00 o'clock, I imagine.

12 Q. Is that a lighted court?

13 A. It wasn't dark.

14 Q. My question was, was it a lighted court? Are
15 there lights there?

16 A. No.

17 Q. Okay. So, about 5:00 o'clock on December 6th
18 would still be light?

19 A. Yes.

20 Q. And how did Kevin come up to you? Were you in
21 the middle of the game, or are you already stopped
22 playing a game?

23 A. We was in the middle of the game.

24 Q. And he would come over and wave to you somehow?

25 A. Correct.

69

1 Q. And you got off the court to talk to him, or
2 did you finish your game?

3 A. I got off the court.

4 Q. Where is Terrence Gibson at that point?

5 A. On the sidelines.

6 Q. And where do y'all have this discussion
7 concerning doing some type of deal?

8 A. In the park.

9 Q. Where would that be in relation to the
10 basketball?

11 A. Right on the side of the basketball court.

12 Q. You didn't have to walk away from the
13 basketball court? You're kind of on the sidelines here
14 talking?

15 A. Yes.

16 Q. And what is -- what is your understanding about
17 what your role is going to be in this plan?

18 A. For me to have the drugs.

19 Q. And had you had any drugs to give to anybody?

20 A. No.

21 Q. Had you and Kevin ever done something like this
22 before?

23 A. No.

24 Q. Had you and Kevin ever gotten together under
25 circumstances similar to this?

70

1 A. No.

2 Q. So this is the first time that your friend,
3 lifelong friend, Kevin, comes to you and says, I've got
4 a plan; we're going to rip somebody off?

5 A. That's correct.

6 Q. And that's okay with you?

7 A. At the time, yes.

8 Q. Okay. And at that time, throughout that night,
9 it was okay with you?

10 A. That's correct.

11 Q. In fact, you played a major role in making that
12 happen, correct?

13 A. That's correct.

14 Q. So, what was your role? How did this plan
15 evolve? How long did y'all stand there and kind of
16 talk about what was going to be done?

17 A. I'm not for sure how long we stayed and talked
18 about it.

19 Q. Are you talking about staying there for half an
20 hour, you think?

21 A. Discussing it with Kevin?

22 Q. Yes.

23 A. Probably so.

24 Q. Somewhere around there. It may have been a few
25 minutes shy of a half an hour. And Terrence Gibson is

71

1 there, also?
2 A. Correct.
3 Q. All right. Now describe -- this area is right
4 by a school, right?
5 A. Yes.
6 Q. But school's not in session on that day, is it?
7 A. No.
8 Q. This was a Saturday?
9 A. It was after school.
10 Q. After school?
11 A. I don't know if it was Saturday or not.
12 Q. Were there a bunch of kids playing basketball
13 there, young, old, different ages?
14 A. Yes.
15 Q. It's a pretty populated park; people come there
16 to play pickup games, kick a ball, play soccer?
17 A. No.
18 Q. When is it that you first see a 9 millimeter
19 handgun?
20 A. Terrence had a gun, but I don't know what kind
21 it was.
22 Q. Okay. Had you ever seen Terrence's gun prior
23 to that?
24 A. Saw his gun? What you mean?
25 Q. Did you ever see the gun that Terrence showed

72

1 you back on December 6th prior to that day?
2 A. No.
3 Q. Okay. So how did Terrence show you the gun?
4 A. Basically, at the time he didn't show me the
5 gun, but he told me he had it.
6 Q. Okay. And so, what did you understand
7 Terrence's role to be?
8 A. Just to be around to protect if anything didn't
9 go right.
10 Q. To protect you if anything didn't go right.
11 What did you understand that to mean? To what extent
12 would somebody go to protect you?
13 A. I don't know what extent would have been.
14 Q. As you're standing there talking with Kevin and
15 Terrence, do you have in your mind when you walk away
16 from there, when you leave the park -- do you have in
17 your mind what the events are going to be in terms of
18 where you're going to go, who is going to be where,
19 things like that?
20 A. No.
21 Q. Do you not know -- do you not discuss the fact
22 that you're ultimately going to go over to Cavalcade
23 near that market?
24 A. No, not at that time.
25 Q. All right. And so, all three of you are

73

1 standing there talking about the plan?
2 A. Correct.
3 Q. And it is very clear to you that at that point
4 in time, there is no agreement that Terrence Gibson is
5 going to be over at Cavalcade watching your back?
6 A. That's correct.
7 Q. When you leave, you leave with Kevin?
8 A. That's correct.
9 Q. And which car are you in at that point?
10 A. The Lexus.
11 Q. Now, but you didn't go and get your mom's
12 Lexus; you had Terrence go get it?
13 A. That's correct.
14 Q. Did you tell Terrence what he was supposed to
15 say to your mom, or did you give him the keys?
16 A. I give him the keys.
17 Q. And you told him where it was parked?
18 A. Yes.
19 Q. Was your mom or dad home at that time?
20 A. I was at my grandmother's house.
21 Q. How far is your grandmother's house from this
22 park?
23 A. Fifteen-minute drive.
24 Q. So y'all had to wait about a half an hour for
25 Terrence to drive fifteen minutes, pick up the car, and

74

1 then come back?
2 A. I don't know how long it took him.
3 Q. Okay. Well, it's a fifteen-minute drive?
4 MR. MCCLELLAN: I object, Your Honor. He
5 said it was a fifteen-minute drive.
6 THE COURT: Rephrase it, please.
7 Q. (BY MR. HILL) How far is the drive from your
8 grandmother's house to the park where you were at?
9 A. How far was the drive from my grandmother's
10 house to the park where I was at?
11 Q. Yes. How many minutes?
12 A. I don't know. Seven minutes. It don't take
13 long.
14 Q. All right. Describe -- I know Mr. McClellan
15 asked you about anything special on your mom's car; and
16 the only thing you talked about were the rims, right,
17 the mag wheels?
18 A. Correct.
19 Q. Are there any special electronics in your mom's
20 car?
21 A. Electronics, TV?
22 Q. Correct.
23 A. Yes.
24 Q. How many?
25 A. Two.

75

1 Q. Where are they?

2 A. In the headrest.

3 Q. So if people were in the backseat, they could
4 watch TV?

5 A. Correct.

6 Q. How long ago were those installed?

7 A. About a year ago.

8 Q. And is your mom letting you use that car on a
9 regular basis?

10 A. When I ask her for it.

11 Q. Now, she allowed you to use the car that day,
12 and that's why you had the keys?

13 A. Yes.

14 Q. So when you and Kevin drive off, where do you
15 understand you're going?

16 A. When me and Kevin drive off?

17 Q. Uh-huh.

18 A. To Northline.

19 Q. When was that decided?

20 A. When was that decided?

21 Q. Right.

22 A. When Kevin and Mamou talked on the phone.

23 Q. And you said when you arrived there, there is a
24 red car that pulled up?

25 A. Yes.

77

1 A. Yes.

2 Q. -- that was shown to you before? Describe for
3 the jury why it was important for you guys to be driving
4 around in a Lexus as opposed to Kevin's Eighty-eight.

5 A. Why was it important?

6 Q. Yeah.

7 A. Okay. It was important that we was trying to
8 make it look like we had what Mamou wanted, that we
9 could afford to get what Mamou wanted.

10 Q. What was Kevin's car looking like?

11 A. What did it look like?

12 Q. Yeah.

13 A. A blue Oldsmobile.

14 Q. Is it fixed up nice, or is it ratty-looking?

15 A. Like a factory car.

16 Q. Looks pretty nice?

17 A. Pretty clean.

18 Q. Got rims on that, too?

19 A. No.

20 Q. So the idea is to look like you guys can do the
21 deal?

22 A. That's correct.

23 Q. Leave that impression that you're a drug
24 dealer?

25 A. That's correct.

76

1 Q. All right. And you indicated at that time that
2 you didn't see the driver, correct?

3 A. That's correct.

4 Q. So -- and you said that the first time you saw
5 the driver of the red car is when you're at the
6 Bennigan's?

7 A. That's correct.

8 Q. So on all the other occasions, both at
9 Northline Mall, by Papa's Barbeque on Cavalcade, over in
10 the Fifth Ward, and at the office building by the
11 parking lot, you don't see the driver of the red car?

12 A. He didn't get out.

13 Q. As to the person that was there during the
14 Northline Mall and on Cavalcade, you couldn't say
15 whether or not the driver of the red car at that time
16 was the same person as the driver later on, could you?

17 A. No. I know he got out the backseat.

18 Q. He was in the backseat? The driver was?

19 A. That's correct. No, the fat guy was in the
20 backseat.

21 Q. All right. And you don't know a nickname or
22 anything for the heavyset guy?

23 A. No.

24 Q. That's the person that's depicted in State's
25 Exhibit No. 88 --

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1 Q. And would you agree y'all had what looked like
2 a pretty good plan to carry it out?

3 A. That's correct.

4 Q. And you had the car?

5 A. That's correct.

6 Q. And you had the backup in case something went
7 wrong?

8 A. That's correct.

9 Q. You had cell phones to communicate?

10 A. That's correct.

11 Q. All right. And what did you have to show if
12 somebody was ultimately going to want to see something
13 to show that there was dope?

14 A. Nothing.

15 Q. Okay. You don't recall ever showing anything
16 that appeared to be a package wrapped up like a kilo?

17 A. No.

18 Q. At no time?

19 A. At no time.

20 Q. When was the last time you had seen Terrence
21 Gibson? When was the last time you got together with
22 Terrence Gibson prior to December 6th of 1998?

23 A. When is the last time I got with Terrence
24 Gibson?

25 Q. Yeah. In other words, before December 6th of

79

1 1998, when is the last time you got together with
2 Terrence Gibson?

3 A. We was together pretty often.

4 Q. Okay. And that's when you would just drive
5 around and hang out and stuff?

6 A. That's correct.

7 MR. HILL: May we approach for a minute,
8 Judge?

9 THE COURT: Yes.

10 (Off-the-record discussion.)

11 Q. (BY MR. HILL) Had you gotten together with
12 Terrence Gibson several months before December 6th of
13 1998?

14 MR. MCCLELLAN: I object to relevance.

15 THE COURT: Sustained.

16 Q. (BY MR. HILL) Had you been with Terrence on
17 December 5th of 1998?

18 MR. MCCLELLAN: I object to relevance.

19 THE COURT: It's overruled.

20 Q. (BY MR. HILL) Were you with him on the day
21 before, on December 5th of 1998?

22 A. Yes.

23 Q. Were you with him on December 4th of 1998?

24 A. Man, I don't know.

25 Q. Well, how do you remember being with him on

81

1 Q. You actually had a telephone conversation with
2 an individual named Chucky, correct?

3 A. That's correct.

4 Q. How long did that telephone conversation last,
5 best estimate?

6 A. One minute.

7 Q. You had indicated on direct that you were going
8 to meet with him, but you didn't want to talk on the
9 phone?

10 A. That's correct.

11 Q. Why was that?

12 A. Because I wanted to see if he had the money.

13 Q. But you did talk to him; and at that time, you
14 indicated he was interested in purchasing a kilogram of
15 cocaine?

16 A. I didn't talk to him, but Kevin told me that.

17 Q. Do you have any information prior to this
18 conversation on the telephone where a kilogram of
19 cocaine is mentioned that suggests that Mr. Mamou was
20 interested in smaller amounts of cocaine?

21 A. Not to my knowledge.

22 Q. Where was your mom's Lexus in relation to the
23 red car up at Northline Mall?

24 A. Where was the car?

25 Q. How far apart were you?

80

1 December 5th?

2 MR. MCCLELLAN: I object to the relevance,
3 Your Honor.

4 THE COURT: Sustained.

5 MR. HILL: May I make a bill at a later
6 point, Judge?

7 THE COURT: Yes.

8 MR. HILL: Thank you.

9 Q. (BY MR. HILL) Where is this Chevron station
10 that you guys met up at?

11 A. Lockwood and 610.

12 Q. Okay. And where is the Chevron station that
13 you first met Mary Carmouche at?

14 A. Lockwood and 610.

15 Q. It's the same one?

16 A. Correct.

17 Q. Okay. It's your testimony that you never knew
18 and never had met Charles Mamou, Samuel Johnson, or
19 Terrence Dodson prior to December 6th of 1998?

20 A. That's correct.

21 Q. Do you recall testifying on direct examination
22 when Mr. McClellan was talking to you that you said you
23 met up with Walter at the basketball court, you spoke on
24 the cell phone with Chucky?

25 A. That's correct.

82

1 A. Couple of feet, I imagine.

2 Q. Is it your -- what is your testimony about who
3 had decided to go to Northline Mall?

4 A. What was my testimony?

5 Q. What is your testimony about who chose, I
6 should say, to go to Northline Mall? Who picked that
7 spot?

8 A. Kevin.

9 Q. Kevin Walter?

10 A. That's correct.

11 Q. And you got out of the car with Kevin?

12 A. At the mall?

13 Q. Yes, sir.

14 A. Correct.

15 Q. And Mr. Mamou got out of the car, along with a
16 fellow that's been identified as State's Exhibit No. 88?

17 A. That's correct.

18 Q. Now at one point, is it true that Mr. Mamou
19 attempted to give a bag to Kevin Walter?

20 A. That's correct.

21 Q. And presumably, that bag is supposed to contain
22 money, right?

23 A. That's correct.

24 Q. And is it clear that that bag is extended
25 towards Mr. Walter by Mr. Mamou?

83

1 A. That's correct.

2 Q. And Kevin refuses to take it?

3 A. That's correct.

4 Q. Were you guys concerned at that point that Mr.
5 Mamou was going to be some type of undercover police
6 officer?

7 A. I didn't think about that.

8 Q. All right. For whatever reason, Kevin does not
9 take the bag, correct?

10 A. Correct.

11 Q. And then who is it that directs all of the
12 cars -- the two cars to drive over off of Cavalcade?

13 A. Me and Kevin.

14 Q. You tell me what you said.

15 A. What I said?

16 Q. Uh-huh.

17 A. To who?

18 Q. To whoever was listening to you. If you were
19 part of the person, of the two people that were saying
20 you were going to go over to Cavalcade, what did you say
21 about that?

22 A. I said, Let's go.

23 Q. Who was it that actually gave the directions as
24 to where the next meeting was going to occur?

25 A. I'm not for sure.

84

1 Q. It wasn't Mr. Mamou, right?

2 A. No.

3 Q. So it would have either been you or Kevin?

4 A. Correct.

5 Q. Did I hear you correctly when you said that
6 when you and Kevin went to the Northline Mall, Terrence
7 Gibson stayed at the basketball courts?

8 A. That's correct.

9 Q. So when is the next time you actually see
10 Terrence Gibson? You leave him at the basketball
11 courts. He's not at Northline Mall. You don't see him
12 on Cavalcade by the store. When is the next time you
13 see Terrence Gibson?

14 A. I see him at Lockwood and 610.

15 Q. At the Chevron station, okay, at Cavalcade, the
16 driver of the red car stays in there the entire twenty
17 or thirty-minute time that y'all are outside talking?

18 A. That's correct.

19 Q. What are you saying to Mr. Mamou or to the big
20 fellow that's with him, trying to convince Mr. Mamou to
21 give up the money?

22 A. I told him we can get it; ain't no problem.

23 Q. That doesn't take twenty or thirty minutes,
24 right?

25 A. Yeah.

85

1 Q. So, give us a little bit more detail about what
2 you're saying and how you're saying it.

3 A. That's pretty much basically all I was saying.

4 Q. All right. What about your friend, Kevin?

5 A. He was saying the same thing.

6 Q. And Mr. Mamou and the other fellow are
7 basically saying, Well, we need to see the dope;
8 otherwise, we're not going to give you money, right?

9 A. Mamou say that -- that's what the other guy
10 was saying, the heavysset guy.

11 Q. The heavysset guy was saying what?

12 A. Don't let them take the money.

13 Q. That's the person you identified in State's
14 Exhibit No. 88?

15 A. That's correct.

16 Q. Did you ever attach a name or a nickname to
17 that person?

18 A. No.

19 Q. All right. How much money are we talking about
20 at this point?

21 A. \$20,000.

22 Q. You indicated -- I'm going to ask you -- you
23 said that you and Kevin went to Lockwood, the gas
24 station, which was a Chevron station, to get some gas.
25 You met up with Terrence there, and you went and parked

86

1 Kevin's car at his home?

2 A. Correct.

3 Q. Now his home is on Bennington Street?

4 A. That's correct.

5 Q. Where does Curry Street intersect Bennington?
6 Is that close by?

7 A. Yes.

8 Q. Is that the intersection right where Kevin
9 lives?

10 A. No.

11 Q. Who lives at Bennington and Curry?

12 A. No one.

13 Q. Is it like a major intersection, or is it part
14 of a residential neighborhood?

15 A. Part of a residential neighborhood.

16 Q. Do you know anybody that lives -- other than
17 Kevin -- that lives in that immediate area?

18 A. I know everyone.

19 Q. There are other friends of yours that live
20 there then?

21 A. No.

22 Q. Is Kevin the closest friend that you have
23 living near that area of Curry and Bennington?

24 A. No.

25 Q. Who would be?

87

1 A. I got many friends.

2 Q. Okay. After you go to the Chevron station,
3 what's the plan at that point?

4 A. It was supposed to be over, I guess. It wasn't
5 going to work.

6 Q. So what are y'all going to do at that point?

7 A. We was going to go our separate ways. Terrence
8 was going to go his way, and me and Kevin going to go
9 our way.

10 Q. You and Kevin go your separate ways to go
11 where?

12 A. We just going to ride.

13 Q. Just so the jury knows, when you say, We're
14 just going to ride, you mean literally, just talking
15 about riding around the neighborhood?

16 A. That's correct.

17 Q. How long do you just go around and ride for?

18 A. How long do I go ride for?

19 Q. Uh-huh.

20 A. As long as I want to.

21 Q. Well, on that night how long did you?

22 A. We rode for -- we didn't really ride. Just
23 around there, because we got the phone call.

24 Q. That phone call comes from?

25 A. Mamou.

89

1 A. No.

2 Q. You were not driving the car, right?

3 A. On the way to Bennigan's, no.

4 Q. Did you drive the car at any point that night?

5 A. Yes.

6 Q. When?

7 A. From there to close to Mary's house.

8 Q. Okay. From where to close to Mary's house?

9 A. From Chevron.

10 Q. So you drove your mom's car from Chevron over
11 to near Mary's house?

12 A. From Chevron to park the car that Terrence was
13 driving, from there to close to Mary's house.

14 Q. Close to Mary's house?

15 A. That's correct.

16 Q. Y'all stopped another place for a while?

17 A. Stop sign. Not for awhile. We just stopped.

18 Q. All right. You get the call from Mamou?

19 A. At the Chevron.

20 Q. At the Chevron?

21 A. That's correct.

22 Q. And that's when you decide you're going to go
23 over and pick up Mary?

24 A. Yes.

25 Q. Now when you have gotten the phone call at the

88

1 Q. And so, you're just starting to ride around;
2 got no plans, right?

3 A. That's correct.

4 Q. You're just going to ride?

5 A. That's correct.

6 Q. It's going to be you and Kevin? Terrence is
7 off riding somewhere else, or at least he left you at
8 that point?

9 A. He was there at that point.

10 Q. He hadn't left yet?

11 A. That's correct.

12 Q. So you have no plans to do anything, and you
13 get a call from Chucky Mamou?

14 A. That's correct.

15 Q. What does Chucky tell you?

16 A. He didn't call me. He called Kevin.

17 Q. After Kevin had this telephone conversation,
18 what did you understand the plan to be?

19 A. That the heavysset guy was going to trust Mamou
20 with the money.

21 Q. Okay. And where was it that you all were going
22 to meet up?

23 A. At the Bennigan's.

24 Q. Did you have an idea of what Bennigan's they
25 were talking about?

90

1 Chevron station from Mamou, you know, you're thinking
2 that the deal's back on, right?

3 A. Yes.

4 Q. Your plan is to try and get the twenty grand
5 together?

6 A. The plan was he was going to hand over the
7 twenty grand.

8 Q. And you were going to walk with it?

9 A. He was -- Kevin was going to drive off with it.

10 Q. How was that going to happen?

11 A. He say that he knew Mamou and that Mamou don't
12 trust him. We told him we would be right back with it,
13 and we were going to get on the freeway and leave.

14 Q. And this was going to happen at the Bennigan's?

15 A. To my knowledge.

16 Q. So, did Kevin explain to you that he was
17 familiar with having it on the freeway and everything
18 right there off the Bennigan's?

19 A. He just drove there.

20 Q. He knew how to get there?

21 A. Yes.

22 Q. He didn't need direction?

23 A. No.

24 Q. So you drove all the way from the north side of
25 town all the way to the south side of 610 Loop?

91

1 A. That's correct.

2 Q. About how far is that a drive?

3 A. I don't know. Pretty good piece.

4 Q. Okay. And once you get there, all six of you
5 go inside the Bennigan's?

6 A. That's correct.

7 Q. This is the first time now you're meeting the
8 driver of the red car?

9 A. That's correct.

10 Q. And he's introduced to you as Samuel Bug
11 Johnson. Did you ever hear him referred to as Bug?

12 A. Not to my knowledge.

13 Q. Who asked to step outside while you're at the
14 Bennigan's?

15 A. Who asked who?

16 Q. Who says, Let's step outside?

17 A. Mamou.

18 Q. And does he say that to you?

19 A. That's correct.

20 Q. Because you're the guy that's supposed to have
21 the dope, right?

22 A. That's correct.

23 Q. And that was part of the plan, for you to be
24 the individual that was actually in possession of it?

25 A. That could get it.

93

1 Q. So whose car was he going to take, the blue
2 Lexus?

3 A. Yes.

4 Q. So the three of you were going to be left
5 there?

6 A. No.

7 Q. Y'all were going to go?

8 A. That's correct.

9 Q. So, Mr. Mamou was going to trust the four of
10 you to leave with \$20,000 in cash?

11 A. He was going to trust Kevin.

12 Q. Well, but he would be trusting you, as well;
13 because you were with Kevin, right?

14 A. I guess.

15 Q. And he would be trusting Terrence Gibson
16 because he was with Kevin and you, correct?

17 A. I guess.

18 Q. And this is a person, Charles Mamou, that you
19 had met for the first time how many hours before?

20 A. I don't know.

21 Q. Several hours before, right?

22 A. That's correct.

23 Q. Going to trust you with \$20,000?

24 A. No, trust Kevin.

25 Q. So when you and Mr. Mamou step outside, what

92

1 Q. That could get it?

2 A. That's correct.

3 Q. Did you ever tell Mr. Mamou who you were going
4 to be getting it from?

5 A. No.

6 Q. Did you ever tell Mr. Mamou that you were
7 connected with Rap A Lot Music?

8 A. No.

9 Q. You ever give him a front story to try and
10 explain how it is you would be able to get a kilogram of
11 cocaine?

12 A. No.

13 Q. So you just said to him, I can get a kilogram
14 of cocaine; you give me 20,000 and I go get the dope?

15 A. That's correct.

16 Q. That's how the plan was going to be?

17 A. Yes.

18 Q. How were y'all going to, like, be sure to be in
19 the car so you would all get away once he gave you the
20 \$20,000?

21 A. From my understanding, he was going to trust
22 Kevin to go and come back with it.

23 Q. Well, Kevin would have to leave in a car,
24 right?

25 A. That's correct.

94

1 are you telling him?

2 A. He asked me could I get it down for a cheaper
3 price.

4 Q. How much cheaper?

5 A. I didn't say.

6 Q. How come?

7 A. Because I didn't know.

8 Q. Well, did you tell him that you would check
9 with anybody?

10 A. I told him I would discuss it with Kevin.

11 Q. And so, how long are you outside with him?

12 A. Not long.

13 Q. Give us your best estimate of how long a period
14 of time.

15 A. I'm not for sure; approximately five minutes.

16 Q. Certainly, you weren't out there for fifteen or
17 twenty minutes, right?

18 A. Probably not, no.

19 Q. And you see Mr. Mamou leave at some point?

20 A. We went back into the Bennigan's.

21 Q. Did you see Mr. Mamou leave at some point?

22 A. After we was in the Bennigan's for a minute.

23 Q. Right. And then he comes back?

24 A. Yeah, he leaves and comes back.

25 Q. And that's when you go to this office building

95

1 to try and do the deal; and it doesn't work there,
2 right?

3 A. That's correct.

4 Q. Now what is it about that location that you
5 don't like?

6 A. It wasn't me who mentioned leaving from there.

7 Q. Who are you attributing that to?

8 A. Mamou.

9 Q. Okay. But you guys followed Mr. Mamou from the
10 Bennigan's through this office complex?

11 A. That's correct.

12 Q. Parking lot of an office complex?

13 A. Just office, business, yeah, that's correct.

14 Q. So he takes you to someplace and then tells you
15 he doesn't like it?

16 A. That's correct.

17 Q. And where do you drive to directly from there?
18 Where do you go to?

19 A. To some street.

20 Q. And that's where the events take place, where
21 the shooting occurs?

22 A. That's correct.

23 Q. Nothing in between the two?

24 A. No, not to my knowledge.

25 Q. Nothing in between the Bennigan's and the

97

1 Q. Okay.

2 A. -- to my knowledge.

3 Q. Okay. And they were close by where this event
4 took place, where you ultimately stopped the cars?

5 A. I'm not for sure. It was dark.

6 Q. All right. Could you see well?

7 A. Pretty much.

8 Q. How far out in front could you see in the
9 darkness?

10 A. To the red car.

11 Q. All right. And that red car was directly in
12 front of you?

13 A. Yes.

14 Q. In your own words, describe for the jury's --
15 I'm not going to interrupt you. I want you to just tell
16 us, from the time that you're following the red car
17 until the cars are facing one another. I want you to
18 describe to the jury how that takes place.

19 A. Okay. We were following the red car. The red
20 car was in front of us. Kevin was driving right behind
21 the red car. The red car goes down the street, speeds
22 up a little bit. I turn around, and we pull right in
23 front of the red car.

24 Q. How long does that entire thing take?

25 A. I'm not for sure.

96

1 office building?

2 A. Not to my knowledge.

3 Q. Now what are you, personally, thinking at this
4 point? Are you a little bit concerned about Mamou?

5 A. No, because I was trusting that Kevin knew what
6 he was doing.

7 Q. Okay. So you were relying on Kevin, because
8 you figured Kevin knows how to do this?

9 A. Because he had me believe that he know Mamou
10 well.

11 Q. So, Kevin was actually convincing you that he
12 knew Mamou and trusted him?

13 A. That's correct.

14 Q. And this is Kevin, your good friend?

15 A. That's correct.

16 Q. Now have you later -- have you since learned
17 that they were or were not good friends?

18 A. I learned that they wasn't honest as they
19 should have been.

20 Q. Okay. Do you say anything as you're driving
21 down this dark road? There is no lights on that road,
22 right? Or are you saying there were very few lights?

23 A. Very few.

24 Q. Like overhead lights, like streetlights?

25 A. One or two --

98

1 Q. Is it your testimony that when the red car
2 speeds up, it immediately goes down the road, spins
3 around, and now they're facing you?

4 A. Yes.

5 Q. Were you concerned that you were going to have
6 a collision, that they were, like, coming at you?

7 A. No.

8 Q. Why not?

9 A. Because I was in the backseat. I wasn't really
10 paying attention, thinking about all of that.

11 Q. Were you with Mary in the backseat?

12 A. Yes.

13 Q. Were y'all talking?

14 A. Yes.

15 Q. What were you talking about?

16 A. I don't remember.

17 Q. Did it strike you as odd when you saw the car
18 turning around and coming back? Did that strike you as
19 odd?

20 A. Yes.

21 Q. Why?

22 A. Because I didn't know what they was doing.

23 Q. Okay. You had no idea what was going on at
24 that point?

25 A. That's correct.

99

1 Q. And did Kevin or Terrence say anything while
2 they're in the car and these guys spin around; they're
3 now facing you?

4 A. Not to my knowledge.

5 Q. Your right in the car, right?

6 A. I wasn't paying attention.

7 Q. You weren't paying attention?

8 A. No.

9 Q. Going down a dark road that you're not familiar
10 with --

11 A. That's correct.

12 Q. -- in your mom's car, and you weren't paying
13 attention?

14 A. That's correct.

15 Q. Well, what was going to be your part of the
16 plan at that point? You're still wanting to get the
17 twenty grand, right?

18 A. That's correct.

19 Q. You're going to be the person who supposedly
20 has gotten the dope?

21 A. That's correct.

22 Q. So what were you going to do at the point when
23 you got to that location? What was your role?

24 A. I thought what I was supposed to have done with
25 the old one --

100

1 Q. Well, where was the dope supposedly?

2 A. It wasn't supposed to be no dope.

3 Q. No; but when you're talking to Mr. Mamou,
4 right, you're trying to convince him that you're going
5 to be able to get dope --

6 A. That's correct.

7 Q. -- right?

8 A. That's correct.

9 Q. So, do you tell him where you're going to go
10 get the dope?

11 A. No.

12 Q. Do you tell him you already have the dope?

13 A. No.

14 Q. So, he is -- he hasn't seen the dope at all?

15 A. That's correct.

16 Q. You never lift up your hood at Bennigan's or
17 anything and show him something that's wrapped up to
18 look like a kilogram of cocaine, do you?

19 A. That's correct.

20 Q. And there was never any cocaine in that
21 vehicle?

22 A. That's correct.

23 Q. Is that your testimony?

24 A. Yes.

25 Q. So you thought your job was over. What was

101

1 Terrence and Kevin going to do at that point?

2 A. I thought he was going to hand the money over
3 to Kevin. We was going to drive off, supposedly going
4 to get the dope, but just get on the freeway and leave.

5 Q. So that didn't happen at the Bennigan's the way
6 Kevin thought it was going to?

7 A. I guess not.

8 Q. And it didn't happen at the business park or
9 the office complex the way Kevin and you thought it was
10 going to?

11 A. That's correct.

12 Q. So, now you're thinking on this road it's going
13 to happen?

14 A. That's correct.

15 Q. Who gets out of your car first?

16 A. Terrence.

17 Q. He's sitting in the front passenger seat?

18 A. That's correct.

19 Q. Where does he go to?

20 A. To the back of the car.

21 Q. So he walks by your side of the car?

22 A. Yes.

23 Q. Able to see outside of your car?

24 A. Little bit.

25 Q. Any tinting on the windows?

102

1 A. Of my car?

2 Q. Yeah, your mom's car.

3 A. No.

4 Q. But with the darkness of the night, are you
5 able to see people walking by your car?

6 A. Yes.

7 Q. All right. Obviously you knew Terrence, so you
8 knew it was Terrence?

9 A. That's correct.

10 Q. Who is the next person out?

11 A. Out of what, my mom's car?

12 Q. Yes.

13 A. I got out after Mamou got out the other car.

14 Q. So, Mamou is in the passenger's side of the red
15 car?

16 A. Yes.

17 Q. And do you actually see him get out of the car?

18 A. I didn't actually see him get out of the car.

19 I saw him as he was walking past my mom's car.

20 Q. What side was he on?

21 A. The left side.

22 Q. Would that be on the side that Mary was?

23 A. Yes.

24 Q. So what? Did you like look through the window
25 and see him walking back towards the back of your car?

103

1 A. I saw him from the front, coming from the front
2 window. I saw him through the front window.

3 Q. Did you see him then go towards the driver's
4 side of the car?

5 A. That's correct.

6 Q. Do you turn around and look back through the
7 rear window to see what they're doing back there?

8 A. Yes.

9 Q. What are they doing?

10 A. They looked like they was talking.

11 Q. Anybody pop the trunk?

12 A. No.

13 Q. Does Terrence Gibson have any communication
14 with Kevin Walter --

15 A. No.

16 Q. -- hit on the car, do anything at all to signal
17 either to you or Kevin inside the vehicle?

18 A. No.

19 Q. How long are they out there talking?

20 A. I'm not for sure.

21 Q. Do you see whether or not the individual that's
22 the driver of the red car gets out of the car?

23 A. No.

24 Q. You don't see that?

25 A. No.

105

1 Q. Well, how about if we take a few seconds here
2 to just kind of wait and see how long they're back
3 there? If they pull up and Terrence got out of the car
4 and walked in the back, can you tell me how long they
5 were back there talking? You're sitting in the car with
6 Mary during this period of time you're looking back
7 there. Kevin in the front seat, right?

8 A. Yes.

9 Q. Just go ahead and say, right about now is the
10 time when you -- whenever you hear a shot, you tell me
11 when that would be?

12 A. When did I hear a shot?

13 Q. Uh-huh.

14 A. After I left from the back with them.

15 Q. Okay. So are they back there talking without
16 you for a minute or two?

17 A. Yes.

18 Q. What causes you to step out of the vehicle to
19 join them at the back?

20 A. Because I was fixing to tell them right there
21 ain't a good spot.

22 Q. So you're now feeling uncomfortable with the
23 location?

24 A. That's correct.

25 Q. How come?

104

1 Q. I want to make sure what your answer is. Did
2 you see the person in the red car, the driver, get out?

3 A. At the street?

4 Q. Yes.

5 A. No.

6 Q. You're not saying he didn't get out. You're
7 saying you didn't see him get out?

8 A. That's correct.

9 Q. Because at some point you turned around, and
10 you're looking through the back window?

11 A. That's correct.

12 Q. All right. Now let me go back for just a
13 second. As you're driving down the street, does
14 Terrence have a gun out?

15 A. No.

16 Q. Where is the gun?

17 A. I guess in his pocket.

18 Q. Where had it been earlier when you saw it at
19 the playground?

20 A. I didn't see it at the playground. He told me
21 he had it at the playground.

22 Q. Did he tell you where he was keeping it?

23 A. No.

24 Q. How long are they back there talking?

25 A. I'm not for sure.

106

1 A. Because I just was.

2 Q. There were only two cars there, correct?

3 A. That's correct.

4 Q. The story that you told the police later about
5 being boxed in is a lie?

6 A. That's correct.

7 Q. And you did tell them that story, right?

8 A. Pretty much.

9 Q. And that's the same story that you and Kevin
10 told the people --

11 MR. MCCLELLAN: I object. He wouldn't
12 know what Kevin told the people.

13 THE COURT: All right.

14 Q. (BY MR. HILL) Were you present when you and
15 Kevin were at the scene when the security guard came,
16 Mr. McDonald, the gentleman that first came up in the
17 red truck?

18 A. Yes, I was present.

19 Q. How close were you to Kevin at that point?

20 A. Not far away.

21 Q. Like, tell me to stop when I've gotten as close
22 to you as Kevin was at the time the man in the red truck
23 comes.

24 A. About right there.

25 Q. Would you say this is maybe six to eight feet

107

1 away?

2 A. I'm not sure.

3 Q. Okay. Not too good on distances?

4 A. Nope.

5 Q. Are you both talking to the gentleman that I'm
6 saying his name is Mr. McDonald? Shorter,
7 light-skinned black male that was a security guard. Do
8 you remember seeing a man that looked like that?

9 A. Yes.

10 Q. He was the man that picked up the gun and put
11 it in the back of his belt.

12 A. Okay.

13 Q. That's the person I'm talking about. Are you
14 and Kevin talking to him and explaining what had
15 happened?

16 A. I don't remember Kevin's -- I don't remember
17 Kevin saying nothing to him. If he did, I don't know.

18 Q. Were you talking to Kevin?

19 A. Yes.

20 Q. Believe on direct examination you said that
21 before the security guard got there, you and Kevin
22 spoke?

23 A. Yes.

24 Q. What did you say to Kevin?

25 A. Before -- I asked him was he going to make it?

109

1 A. I don't remember that.

2 Q. Do you recall listening to Kevin talk to the
3 security guard?

4 A. No.

5 Q. Was he talking to him?

6 A. I don't recall. I don't know.

7 Q. Okay. But you recall talking to him and
8 telling him this story about the good samaritan?

9 A. Correct.

10 Q. As you're sitting there, about how long is
11 it -- and do the best you can to give me a time, if you
12 would. How long do you have to wait until the ambulance
13 gets there?

14 A. I don't even remember.

15 Q. Okay. What were you doing during the time that
16 you were waiting for the ambulance?

17 A. Hurt.

18 Q. Right. You had been shot in the arm?

19 A. That's correct.

20 Q. So what were you doing to try and tend to your
21 injury?

22 A. Hold my arm up.

23 Q. Did you have anything wrapped around it or
24 anything?

25 A. No.

108

1 Q. All right. And what did Kevin say?

2 MR. MCCLELLAN: Object to hearsay, Your
3 Honor.

4 THE COURT: Sustained.

5 Q. (BY MR. HILL) Did y'all have an occasion to
6 talk about how you were going to explain what had just
7 taken place?

8 A. No.

9 Q. So when Mr. McDonald got there and was talking
10 to both of you, could Kevin hear what you were telling
11 Mr. McDonald?

12 A. I don't know.

13 MR. MCCLELLAN: I don't know how this
14 witness would know.

15 Q. (BY MR. HILL) What did you tell Mr. McDonald?

16 A. I told him we was helping somebody that was on
17 the side of the road, and they robbed us and took the
18 car.

19 Q. Do you recall kind of chuckling about, That's
20 the last time I'm going to help somebody?

21 A. I don't remember.

22 Q. Could you have done that?

23 A. Chuckling, meaning what?

24 Q. You know, like, That's the last time I'm going
25 to help somebody on the side of the road.

110

1 Q. Were you walking around? Were you standing?

2 A. Sometimes.

3 Q. Did you sit down at other times?

4 A. Yes.

5 Q. Where had you walked to at the time that the
6 red truck pulled up?

7 A. Where did I walk to?

8 Q. Yeah. Where had you walked to?

9 A. I had just got up when I saw the lights on the
10 truck, and I noticed that it wasn't the same car that
11 had left from the shooting. I got up and caught myself
12 trying to flag the truck down.

13 Q. You were trying to flag the truck down?

14 A. Yes.

15 Q. And the truck stopped?

16 A. Yes.

17 Q. Let me ask you: When you step out of the
18 vehicle to go join Terrence and Mr. Mamou in the back --

19 A. That's correct.

20 Q. -- where do you go to?

21 A. Right past the back of the car.

22 Q. And do you say to both of them, this is not a
23 good spot; we need to get out of here?

24 A. I was telling Terrence that.

25 Q. Where was Mr. Mamou in relation to Terrence at

111

1 that point?

2 A. Pretty close to Terrence.

3 Q. And then what happens?

4 A. And as I said, I turned immediately around and
5 was going to open the door to get back in the car. Then
6 I heard a gunshot.

7 Q. Did not see who fired the gunshot?

8 A. No.

9 Q. What did you immediately do? Did you have the
10 door open when you hear the gunshot?

11 A. I'm not for sure. I know about opening it,
12 because I wanted to get back in there.

13 Q. But you did not get back in the car?

14 A. No.

15 Q. Realized Mary's in the car, right?

16 A. That's correct.

17 Q. And so when you hear the gunshot, where do you
18 go?

19 A. I run to the right in the field.

20 MR. HILL: May I have the witness step
21 down for just a minute?

22 THE COURT: Yes.

23 Q. (BY MR. HILL) Why don't you step down here,
24 Mr. Holley. I want to show you what's been introduced
25 as State's Exhibit No. 22. Have you seen this diagram

113

1 Q. Would your parents take you down there?

2 MR. MCCLELLAN: That would be pretty
3 irrelevant, Your Honor.

4 THE COURT: Sustained.

5 Q. (BY MR. HILL) So now you're familiar with this
6 diagram, right? You've seen it and you've walked
7 through it with Mr. McClellan, explaining to him how
8 everything happened, correct?

9 A. Repeat the question again.

10 Q. You have seen this diagram before in Mr.
11 McClellan's office?

12 A. I don't know if this was that one.

13 Q. Does this look familiar to you as a diagram
14 you've seen --

15 A. Yes.

16 Q. -- at Mr. McClellan's office? Can you show us
17 where the blue Lexus would have been on this diagram
18 when it came to a stop?

19 A. Where it would have been?

20 Q. Uh-huh.

21 A. I imagine on this side.

22 Q. So, right about here. When you got out of the
23 blue Lexus, you walked to the back?

24 A. That's correct.

25 Q. Turned around, started coming back, going to

112

1 before?

2 A. No, not to my knowledge.

3 Q. You're going to have to keep your voice up.

4 You've never seen this diagram or anything like it?

5 A. Yes.

6 Q. Where did you see this?

7 A. At McClellan's office.

8 Q. Lyn McClellan's office?

9 A. Yes.

10 Q. How many times you been there to meet with him?

11 A. I'm not for sure.

12 Q. More than one time?

13 A. That's correct.

14 Q. More than two times?

15 A. Yes.

16 Q. More than three times?

17 A. Yes.

18 Q. How many times?

19 A. I don't know.

20 Q. More than four times?

21 A. I don't know. I said I'm not for sure.

22 Q. Okay. And when you would go to Mr. McClellan's
23 office, would he send an investigator to pick you up and
24 bring you down there?

25 A. No.

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1 get into the Lexus. Where do you run off to when you
2 hear the shot?

3 A. This way.

4 Q. That way. So that you would be running in an
5 easterly direction, do you know?

6 A. I guess.

7 Q. Which way is north on this?

8 A. Which way is north?

9 Q. Uh-huh.

10 A. I imagine this.

11 Q. Where it says right there north, so that would
12 have to be east?

13 A. That's correct.

14 Q. How's -- do you know how far you run into the
15 brush?

16 A. No.

17 Q. How long you stay in there?

18 A. I don't know.

19 Q. Where are you hit? When are you shot? Where
20 are you when you actually feel the bullet hit you?

21 A. I was in the field.

22 Q. So you had already cleared the curb, and you're
23 into the field?

24 A. Yes.

25 Q. You can have a seat. Pretty dark in that

115

1 field?

2 A. Yes.

3 Q. Were you trying to hide?

4 A. Run.

5 Q. Did you ever duck down at all?

6 A. No.

7 Q. Am I to understand that you never saw what took
8 place between Terrence Gibson and Charles Mamou?

9 A. That's correct.

10 Q. Other than shots being fired that you hear,
11 what else do you hear before you come out of the bushes,
12 the brush area?

13 A. After the shot?

14 Q. What, if anything, do you hear before you come
15 out of the brush?

16 A. Nothing but gunshots.

17 Q. All right. Well, how do you know then that
18 it's okay for to you come out of that area?

19 A. Because I heard them all because of burning
20 rubber and speeding off.

21 Q. Did you see them doing that?

22 A. Yes.

23 Q. All right. And what did you see?

24 A. I saw the red car backing up and turned around
25 in the street, and I saw the blue car leaving off.

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1 A. That's correct.

2 Q. Your right arm?

3 A. That's correct.

4 Q. You're holding your arm, trying to keep it from
5 bleeding, I take it?

6 A. That's correct.

7 Q. And when you come out onto the road surface, up
8 until the time that the security guard gets there, your
9 testimony is you never see a gun on the road?

10 A. That's correct.

11 Q. Do you recall what you were hollering? Mr.
12 McClellan asked you what you were doing. You said you
13 were hollering. Do you recall what you were saying?

14 A. No.

15 Q. Do you recall ever telling the police that Mary
16 had been taken off in a red Intrepid?

17 A. I don't remember.

18 Q. Might you have said that?

19 A. It's possible.

20 Q. That's the type of car that you identified in
21 one of the State's photographs, right?

22 A. Yes.

23 Q. Are you able to relate -- by that, I mean
24 talk -- with both the security guard and the attendants
25 from the ambulance service, as well as the first police

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1 Q. When you say you saw the red car backing up and
2 turning around, how did they make -- if they're going
3 backwards, how did they turn around and go the other
4 way? Is it like a three point turn where they stop,
5 back up, and pull around; or is it like a scene on shows
6 where they're able to hit the brakes and the car spins
7 around?

8 A. That's pretty much how it was.

9 Q. So it was a very quick thing?

10 A. Yes.

11 Q. Did it appear to you that that red car was
12 trying to get out of there really quick?

13 A. That's correct.

14 Q. And then that vehicle was followed by your
15 mom's Lexus?

16 A. That's correct.

17 Q. And do you say anything at that point? When
18 you hear the cars taking off, are you saying anything?

19 A. No.

20 Q. How do you get out of the brush? Do you walk
21 out, run out, crawl out?

22 A. I run.

23 Q. What are you saying when you're running out?

24 A. I don't remember.

25 Q. You're hurting?

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1 officers that arrive there? Are you able to tell each
2 one of them this same story about how you guys had been
3 hijacked?

4 A. I'm not for sure. I don't know.

5 Q. Do you recall being attended to by a person in
6 the paramedics, the people that come out from the fire
7 department?

8 A. Yes.

9 Q. And was it obvious to you that you were in okay
10 shape, that they were attending to your wound?

11 A. No.

12 Q. You're scared?

13 A. Yes.

14 Q. How much money did you have on you when you
15 went to the hospital? Do you know?

16 A. I'm not for sure.

17 Q. Did you have \$321 with you that night?

18 A. I'm not for sure.

19 Q. Mary lived near Homestead Road?

20 A. That's correct.

21 Q. And y'all openly discussed at Bennigan's what
22 was going to happen in terms of how the deal was going
23 to take place?

24 A. Pretty much.

25 Q. I mean, this is not a secret, right? All six

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1 are sitting there after everybody gets back. Y'all are
2 talking. Mary knows about it. You know about it.
3 Terrence knows about it. Carmouche -- I'm sorry --
4 Mamou knows about it. Mr. Johnson knows about it. And
5 Terrence Gibson knows about it?

6 A. That's correct.

7 MR. HILL: I have no further questions at
8 this time, Judge.

9 REDIRECT EXAMINATION

10 BY MR. MCCLELLAN:

11 Q. Mr. Holley, what was discussed about the dope
12 deal at Bennigan's, inside the restaurant?

13 A. What was discussed?

14 Q. What was discussed?

15 A. That getting it wouldn't be a problem.

16 Q. Who said that?

17 A. I said that.

18 Q. Who did you say it to?

19 A. Mamou.

20 Q. Okay. I mean, y'all were sitting at
21 Bennigan's, in an open restaurant, just saying, Hey, I
22 can get you some dope; ain't no problem? Were you
23 speaking up loud so everybody could hear?

24 A. Yes.

25 Q. Weren't afraid somebody would come by and say,

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1 A. Mamou.

2 Q. As far as you knew, where was Mary when the
3 cars left?

4 A. In the backseat.

5 Q. Of?

6 A. The Lexus.

7 Q. Did you ever see someone dragging someone from
8 one car to the other?

9 A. No.

10 Q. Never heard anybody scream or yelling?

11 A. No.

12 Q. Other than the gunshots that you heard when you
13 were in the field, did you hear anything, word-wise,
14 being said by anybody --

15 A. No.

16 Q. -- during the shooting?

17 A. No.

18 MR. MCCLELLAN: I'll pass the witness

19 RECROSS-EXAMINATION

20 BY MR. HILL:

21 Q. This all happened pretty quickly, those
22 gunshots?

23 A. To my knowledge.

24 Q. What do you mean, to my knowledge?

25 A. I wasn't timing the gunshots.

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1 Y'all talking about doing dope?

2 A. No.

3 Q. Did you have a pager?

4 A. Yes.

5 Q. Did you lose that pager?

6 A. Yes.

7 Q. After you were shot and ran into the field, did
8 you ever hear Mary say anything?

9 A. No.

10 Q. Did you ever hear Mary scream?

11 A. No.

12 Q. Did you ever hear Mary say, No, don't take me?

13 A. No.

14 Q. Did you ever see Mary ever get out of that
15 Lexus?

16 A. No.

17 Q. You say the red car left first?

18 A. That's correct.

19 Q. And the blue car followed?

20 A. That's correct.

21 Q. Did you ever see Mary get out of the car?

22 A. No.

23 Q. Did you ever see someone get in the blue Lexus?

24 A. Yes.

25 Q. Who?

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1 Q. Was it pretty quick, though?

2 A. I imagine.

3 Q. Well, I don't want you to imagine. I want
4 you -- you were there. Did this happen very rapidly?

5 A. Well, I heard gunshots, and then it was a
6 pause; and then I heard some more gunshots and a pause,
7 like that.

8 Q. All right. Now, so, you actually see Charles
9 Mamou get back into the blue Lexus?

10 A. Yes.

11 Q. So, then, I guess you were close enough to be
12 able to be looking at the road?

13 A. Yes.

14 Q. All right. Now take us through kind of slowly,
15 now that I hear that you're saying you see him get back
16 into the blue Lexus. Where did you see him coming from
17 to get into the Lexus? Which side was he on?

18 A. On the left side, the driver's side.

19 Q. And where was he coming from as he was entering
20 the Lexus?

21 A. He was coming from the back of the Lexus.

22 Q. So he was coming from behind the vehicle,
23 coming up to it?

24 A. Yeah. He wasn't right behind him -- the car.
25 He was at the back of the car. He was behind the car,

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1 but he wasn't right close to the car.

2 Q. Okay. And I take it that at this point the
3 shots had stopped?

4 A. Yes.

5 Q. So, all the shots had been fired that you
6 heard. You didn't hear any other shots fired, and then
7 you see Mamou opening the door and getting into the
8 Lexus?

9 A. That's correct.

10 Q. All right. And he was coming from the backside
11 of the Lexus?

12 A. That's correct.

13 Q. Did you see Kevin Walter?

14 A. At that time, no.

15 Q. When you're in the brush and you're running
16 through there, do you hear a door open and close?

17 A. No.

18 Q. And you don't recall whether the door on the
19 rear passenger side of the Lexus that you were
20 attempting to get into, whether it was open or not?

21 A. I don't recall.

22 Q. Okay. You do recall going to the door, right?

23 A. Yes.

24 Q. And do you recall placing your hand on the door
25 to open it?

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1 A. I don't recall that.

2 Q. That's where you're not sure?

3 A. Yes, sir.

4 Q. Thank you, sir.

5 MR. HILL: No further questions.

6 MR. MCCLELLAN: One last question.

7 FURTHER REDIRECT EXAMINATION

8 BY MR. MCCLELLAN:

9 Q. At any time out there on the road where the
10 shooting occurred, were the hoods of either the red car
11 or the blue car in a raised position?

12 A. No.

13 Q. Trunk of either car?

14 A. No.

15 MR. MCCLELLAN: Nothing further.

16 FURTHER RECROSS-EXAMINATION

17 BY MR. HILL:

18 Q. Let me just qualify that. Were either of the
19 hoods popped? In other words, not raised up, but the
20 latch on the inside, how you open it?

21 A. Not to my knowledge, I don't think.

22 Q. Because you weren't paying attention to what
23 Kevin was doing in the front seat, right?

24 A. That's correct.

25 MR. HILL: No further questions.

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1 MR. MCCLELLAN: I have nothing further.

2 THE COURT: Ladies and gentlemen, please
3 go in the jury room. We're making arrangements to take
4 you to lunch. All the previous admonitions are still in
5 effect.

6 (Lunch recess.)

7 (Jury is brought in and seated.)

8 MS. CONNORS: Alex Longoria, Your Honor.

9 ALEX LONGORIA,

10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. CONNORS:

13 Q. Sir, would you introduce yourself to the jury,
14 please?

15 A. My name is Alex Longoria.

16 Q. Where do you work?

17 A. Reliant Energy/H L & P.

18 Q. How long have you worked for H L & P?

19 A. In May will be three years.

20 Q. What do you do for H L & P?

21 A. I read the light meters.

22 Q. Directing your attention back to December of
23 1998, were you working that day?

24 A. Yes, ma'am.

25 Q. Are you assigned to any particular part of the

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1 city?

2 A. Everyday we're assigned to different parts of
3 the city.

4 Q. On December 8th, 1998, what hours were you
5 working?

6 A. From 7:30 to 4:00.

7 Q. And what part of the city were you working?

8 A. The southwest area.

9 Q. Did you read the meters on Lynchester Street?

10 A. Yes, ma'am.

11 Q. Did you go to a particular location, 9227
12 Lynchester?

13 A. Yes, ma'am.

14 Q. Is that in Harris County, Texas?

15 A. Maybe borderline. I'm not sure.

16 Q. Okay. Let me show you what's been marked as
17 State's Exhibits 47, 52, 54, and 57. Do you recognize
18 these photographs --

19 A. Yes, ma'am.

20 Q. -- of the location at 9227 Lynchester that you
21 went to back on December 8, 1998?

22 A. Yes.

23 Q. Do these photographs fairly and accurately show
24 what you saw on December 8th, 1998?

25 A. Yes, ma'am.

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1 MS. CONNORS: Your Honor, at this time I
2 tender to defense counsel State's Exhibits 47, 52, 54,
3 57, and offer them into evidence.

4 MR. HILL: No objection.

5 THE COURT: State's Exhibits 47, 52, 54,
6 and 57 are admitted.

7 Q. (BY MS. CONNORS) Was it a residence at 9227
8 Lynchester?

9 A. It was a vacant house.

10 Q. Was there a for sale sign outside?

11 A. Yes, ma'am.

12 Q. When you went to read the meter, where were you
13 going with respect to the house?

14 A. The gate was on the right side of the house.

15 Q. You were going to go to the backyard?

16 A. Yeah, to read the light meter.

17 Q. When you entered through the gate, what did you
18 do?

19 A. Stopped, because it was a woman laying on the
20 ground.

21 Q. Can you describe the woman that was laying on
22 the ground?

23 A. Young black male -- female, young black female.

24 Q. About how old did she look?

25 A. Between sixteen and eighteen years old.

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1 there was a young black female missing in Houston by the
2 name of Mary Carmouche? Had you heard that on the
3 news?

4 A. I heard missing, but I never did catch the
5 name. I don't watch the news that much.

6 Q. And what did you say to your dispatcher when
7 you radioed in?

8 A. Just a young female possibly dead.

9 Q. And did anyone respond to your call?

10 A. Yeah, the dispatcher, they radioed into the
11 police.

12 Q. In the meantime, did you see another H L & P
13 employee?

14 A. Well, I had called another employee that was
15 working the area behind me to help me verify if what I
16 seen was true.

17 Q. And did another H L & P employee go with you to
18 the backyard to look at the young woman?

19 A. Yeah, he seen her.

20 Q. Approximately how close did you get to this
21 young girl?

22 A. Maybe three to four feet.

23 Q. Did you touch anything or get any closer than
24 three or four feet?

25 A. No.

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1 Q. Are you a little nervous?

2 A. Yeah.

3 Q. That's okay. Just slow down a second. She was
4 between sixteen and eighteen years old?

5 A. Yes, ma'am.

6 Q. Do you remember how she was dressed?

7 A. Blue jeans, red T-shirt. That's all I could
8 see.

9 Q. When you first saw her, did you notice whether
10 she was alive or not still?

11 A. I kind of suspected it, because I wouldn't see
12 a young girl laying in a vacant house in the daytime.

13 Q. What did you do?

14 A. I rattled the ground with some leaves with my
15 feet to see if she would awaken, and she never did.

16 Q. What did you do at that point?

17 A. First I went to -- there was, down the street,
18 a D.P.S. car. I went knocking at his house. He wasn't
19 home, so I went back to my truck, went to the Stop 'N Go
20 around the corner; because usually there are sheriffs
21 hanging out over there somewhere.

22 Q. Were there any sheriffs there?

23 A. No, so I radioed in.

24 Q. Mr. Longoria, let me ask you: Before you went
25 to that house on December 8th, 1998, were you aware

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1 Q. Let me show you State's Exhibit 147. If we're
2 looking at 9227 Lynchester, where would the gate have
3 been if you're looking at the picture? To the right
4 side?

5 A. Yeah, it would be on the right side.

6 Q. Okay. And then you enter the gate. And about
7 how far did you go through the gate before you saw the
8 young girl lying there?

9 A. Maybe ten feet, if that much.

10 Q. Mr. Longoria, when you saw the young girl
11 laying there and you brought your friend back, could you
12 see any blood on her body?

13 A. No.

14 Q. State's Exhibit 57, if you'll look at the
15 picture, directly at the picture, do you see the young
16 girl with the red shirt in the right-hand corner, what
17 would be straight ahead? What was that right there?

18 A. That would be a fence line.

19 Q. So, back here is the fence line?

20 A. Yes.

21 Q. Is that the backyard, the back part of the
22 yard?

23 A. Yes, ma'am.

24 Q. Mr. Longoria, about how long was it before the
25 police arrived?

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1 A. Approximately, I would say, ten minutes.

2 Q. And did you wait and talk to the police?

3 A. Yeah.

4 MS. CONNORS: I'll pass the witness, Your
5 Honor.

6 CROSS-EXAMINATION

7 BY MR. HILL:

8 Q. Mr. Longoria, I may have missed this when you
9 were testifying, but could you tell us approximately
10 what time you were reading the meters on Lynchester
11 Street that day?

12 A. It was around -- maybe around noon.

13 Q. Noon. Thank you.

14 MR. HILL: No further questions.

15 THE COURT: Call your next, please.

16 MR. MCCLELLAN: State would call Detective
17 Foltz.

18 LARRY D. FOLTZ,
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MCCLELLAN:

22 Q. State your name for the record, please.

23 A. Larry D. Foltz, F-O-L-T-Z.

24 Q. Mr. Foltz, you possibly don't need to get quite
25 that close. How are you employed?

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1 that you would go to otherwise if it had not been
2 connected with another scene?

3 A. That is not as a normal course of the routine.

4 Q. In the normal course of routine, who responds
5 to crimes at that location?

6 A. The Harris County Sheriff's Office.

7 Q. And had Harris County Sheriff's Officers then
8 responded to that location?

9 A. I met some officers there, yes, sir.

10 Q. Okay. That scene was then turned over to
11 y'all, because it was thought to be related to another
12 scene?

13 A. That is correct, sir.

14 Q. Now when you went to that location, can you
15 tell us what was of interest at that location?

16 A. There was the body of a young female laying in
17 the backyard or side yard of a house located at 9227
18 Lynchester Street.

19 Q. At the time that you arrived, did you know who
20 that black female was?

21 A. Not for certain, sir.

22 Q. Was it later determined the identity of who
23 that person was?

24 A. It was, sir.

25 Q. After the investigation had been turned over to

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1 A. City of Houston Police Department, sir.

2 Q. How long have you been so employed?

3 A. I joined the police department in September of
4 1971.

5 Q. And how long have you been in the homicide
6 division?

7 A. Since approximately 1994.

8 Q. Okay. Let me direct your attention back to
9 December the 8th of 1998. Did you have an occasion to
10 go to a scene in Harris County, Texas?

11 A. I did, sir.

12 Q. Did you have an occasion to go to 9722 (sic)
13 Lynchester?

14 A. I did.

15 Q. Is that location located in Harris County,
16 Texas?

17 A. It is in Harris County, yes, sir.

18 Q. Now your jurisdiction with the Houston Police
19 Department, did it extend to that location, as far as
20 the City of Houston Police?

21 A. It was felt that the scene located on
22 Lynchester Street was an extension of a scene that had
23 occurred within the incorporated city limits in the City
24 of Houston.

25 Q. And the question was, would that be a location

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1 the Houston Police Department from the sheriff's office,
2 was a Crime Scene Unit ever called out to process the
3 scene?

4 A. Yes, sir.

5 Q. Can you tell us the condition of the house as
6 to whether or not it was occupied at 9227 Lynchester
7 back on December the 8th of 1998?

8 A. It was a vacant house, sir.

9 Q. Did you check the house to determine whether or
10 not it was open or locked?

11 A. The house was locked and secured, sir.

12 Q. Okay. Had there been any type of indication
13 there had been any forced entry made into the house?

14 A. No obvious signs of forced entry, sir.

15 Q. The black female was found, you said, in the
16 backyard or side yard of the house?

17 A. That is correct, sir.

18 Q. Was it behind any type of structure?

19 A. There was a fence which separated the yard from
20 the roadway, sir, a wooden fence.

21 Q. And was the body found on the street side of
22 the fence or on the backyard side of the fence?

23 A. It was on the yard side of the fence, and the
24 entrance of the yard was blocked by the fence.

25 Q. From the street -- if you were on the street at

135

1 9227 Lynchester, could you -- if the gate to the area
2 where it was open, would you be able to see back into
3 that backyard area?

4 A. I could not, sir, and I tried.

5 Q. Why was that?

6 A. There was a large bush, shrub. I'm not
7 familiar with the nature of the plant; but there was a
8 large plant with a lot of leaf growth and the growth
9 that extended beyond the opening of the gateway, which
10 led into the yard. And it was very difficult to see
11 around the object, that bush.

12 Q. While you were there, did you -- were you
13 present during the -- during the time the body of the
14 black female was examined?

15 A. Would you repeat your question, sir?

16 Q. What position was the black female in at the
17 time that you observed her in the backyard?

18 A. She was laying on her face in that area of the
19 ground. Her legs were bent at the hips, kind of
20 pointed.

21 Q. And were you present when the body was moved at
22 a later time?

23 A. I was, sir.

24 Q. Can you tell us what the condition of the
25 clothing was?

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1 A. Her clothing was damp.

2 Q. And why was that?

3 A. The weather the day before in the Houston area,
4 the day and the night before, had been a rainy -- we had
5 experienced some rain in the area.

6 Q. When the body was moved from the location you
7 first saw it in, were you able to examine the area that
8 the body, I guess, would have been laying on top of?

9 A. I observed the ground that she had been laying
10 on, yes, sir.

11 Q. Did you notice any blood in this area?

12 A. I did see some blood, sir.

13 Q. Was there any other physical evidence located
14 in close proximity to the body?

15 A. It was a live bullet, sir, an unfired
16 cartridge.

17 Q. Did the Crime Scene Unit people recover that,
18 to your knowledge?

19 A. They did, sir.

20 Q. Was there a search made at that location to
21 determine whether or not any fired cartridge case was
22 present at the scene?

23 A. There were two searches, sir.

24 Q. And was a fired cartridge case found at the
25 scene?

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1 A. I did not see a cartridge case found, sir.

2 Q. And none was found, to your knowledge?

3 A. None was found to my knowledge, sir.

4 Q. Was there any weapon recovered at the scene?

5 A. Not to my knowledge, sir.

6 Q. Are you familiar with a 9 millimeter
7 semiautomatic weapon?

8 A. Yes, sir.

9 Q. Let me show you what's been introduced as
10 State's Exhibit No. 38 and ask you, is this a 9
11 millimeter weapon?

12 A. It appears to me to be a 9 millimeter weapon,
13 sir.

14 Q. Okay. Is it a semiautomatic?

15 A. Yes, sir, semiautomatic.

16 Q. Can you tell the ladies and gentlemen of the
17 jury how you were -- if you were going to load the
18 weapon to be fired, what would you do?

19 A. It appears this is a magazine such where the
20 cartridges are stacked, alternately stacked on there.
21 And you put your cartridges in. This spring loaded
22 mechanism depresses as you put cartridges in, and you
23 could possibly put a maximum of thirteen in this
24 specific clip. You would load the clip in such a manner
25 with cartridges. You would drop the cylinder, the

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1 barrel; and that would load the magazine. And you would
2 place this back into the gun, and the gun would be ready
3 to discharge.

4 Q. Okay. Now if a gun were in a position of
5 having a magazine loaded in it and no round in the
6 chamber or in -- would that be a proper terminology?

7 A. Chamber.

8 Q. Could it be fired without chambering a round?

9 A. No, sir. As a safety precaution, it is
10 recommended that no bullet be chambered in this gun with
11 your ammunition in the magazine. And when you're ready
12 to discharge a gun, what you would do is seat the
13 magazine, pull the slide back on the gun and the slide
14 forward, which would eject one round from the top of the
15 magazine into the chamber and chamber the weapon.

16 Q. When you say eject one from the mag, you're
17 saying it takes one from the magazine, which is inside
18 the gun, and puts it in the chamber?

19 A. That is correct, sir.

20 Q. Nothing ejects from the gun?

21 A. No, there is no bullet in the chamber. There
22 would be nothing ejected, sir.

23 Q. Okay. Now have you been to scenes before where
24 it appears someone has been killed as a result of a
25 gunshot and no fired cartridges are found?

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1 A. I have, sir.

2 Q. Okay. And what are possible reasons for no
3 fired cartridge being found at the scene where it
4 appears someone has been shot and killed?

5 A. One possible alternative is somebody may have
6 picked it up.

7 Q. Okay.

8 A. Second possible alternative is somebody may
9 have walked through that area, stepped on that
10 cartridge, and maybe smashed it down into the mud.

11 Q. Is it possible that a cartridge can ever --
12 whenever -- after a gun was fired, for a cartridge to --
13 as opposed to being ejected, jam in the gun after being
14 fired?

15 A. Absolutely, sir.

16 Q. Okay. For a live round to be -- there was a
17 live round found at the scene; is that correct?

18 A. Yes, sir, there was one.

19 MR. MCCLELLAN: Your Honor, may we
20 approach the bench?

21 THE COURT: Yes.

22 (Off-the-record discussion.)

23 THE COURT: If anybody needs to say
24 anything, you will need to leave the courtroom now and
25 we'll put you out and not let you back in again.

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1 Q. So --

2 A. I'm sorry. Rather than the clip, I mean
3 magazine.

4 Q. Is the only requirement then to fire in that
5 weapon, it must be a 9 millimeter?

6 A. I think 9 millimeter would be the most
7 recommended round to fire in that weapon.

8 Q. And it doesn't matter what brand name it is, as
9 long as it fits that particular weapon?

10 A. There is several brands on the market, sir.

11 Q. Was there any weapon recovered at that scene?

12 A. Not at 9227 Lynchester, not that I'm aware of,
13 sir.

14 MR. MCCLELLAN: I'll pass the witness
15 CROSS-EXAMINATION

16 BY MR. HILL:

17 Q. Detective Foltz, you indicated when you went
18 out to the scene there were two searches conducted
19 looking for cartridge cases and, I assume, other
20 evidence, correct?

21 A. Two cartridge cases, sir.

22 Q. Tell the members of the jury what you or others
23 did in order to try and search the area for cartridge
24 cases? How do you actually go about doing that?

25 A. Well, we took a visual view, obviously, early.

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1 Proceed, please.

2 Q. (BY MR. MCCLELLAN) If a gun was in a position
3 where it is ready to be fired and there is a round in
4 the chamber --

5 A. Yes, sir.

6 Q. -- if someone were to -- is it possible then to
7 slide the slide back like you're chambering a round --
8 if the gun is loaded and there is one in the chamber, I
9 mean, as opposed to firing a gun, you can also pull the
10 slide back as if you were chambering a round, right?

11 A. Absolutely, sir.

12 Q. If there was one in the chamber and you pull
13 the slide back, what would happen to the live round
14 that's in the chamber?

15 A. It would be ejected, sir.

16 Q. It wouldn't be fired; it would be ejected?

17 A. It would be ejected, unfired.

18 Q. Have you -- are you aware of situations or been
19 to scenes where there was different brands of ammunition
20 used in the same way?

21 A. I have seen guns loaded in the past, automatic
22 weapons, where when I examined the ammunition that was
23 in the clip, there would be alternate differing brands
24 of the same caliber ammunition seated into the clip of
25 the weapon.

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1 First kind of walked the property looking down into the
2 grass, that type of stuff, looking before we stepped.

3 Q. Let me ask you, when you're out there, is it
4 day or night?

5 A. Both. When we got there it was day. It
6 extended into night.

7 Q. Okay.

8 A. We walked the property looking, looking for
9 evidence. We found none. Once the victim had been
10 removed, we attempted to perform a search with a metal
11 detector; but that metal detector malfunctioned, and we
12 came back the next morning with a metal detector that
13 was functioning and went across the scene again.

14 Q. And no cartridge cases were found?

15 A. I did not see a cartridge case found, sir,
16 other than the one live one that was found under the
17 complainant.

18 Q. Okay. And when you get out there and you
19 cordon off an area, you put crime scene tape around it?

20 A. There was crime scene tape on this area, yes,
21 sir.

22 Q. Mr. McClellan asked you a series of questions
23 regarding the loading and the ejecting of cartridges --
24 from a semiautomatic weapon. And I believe he asked you
25 if there was a bullet already in the chamber and a

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1 person pulls the slide back, that would eject the live
2 round, correct?

3 A. I would agree with that, yes, sir.

4 Q. Right. Are there other ways for a live round
5 to find itself on the ground as you found when you went
6 out to the Lynchester address?

7 A. Somebody could have dropped one.

8 Q. What other role did you play in terms of this
9 particular scene on Lynchester? Was there any other
10 evidence that you searched for?

11 A. There was other items of evidence that I
12 authorized someone to retrieve at that scene.

13 Q. Okay. What type of evidence would that have
14 been?

15 A. I think it was some blue pieces of plastic.
16 There was some latent fingerprints taken. We removed
17 the handle mechanism from the wooden gate door. We
18 picked up a poker, fireplace poker. It seems to me
19 there is something else; but right now, just off the top
20 of my mind, I don't recall.

21 Q. Do you have a report that would refresh your
22 memory?

23 A. Yes, I do.

24 Q. Do you want to take a look at it?

25 A. There was a clear plastic bag.

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1 Q. Okay. Were there any efforts made -- you said
2 that the ground was soft from the rain the night before?

3 A. The ground was muddy, yes, sir.

4 Q. Were there any efforts made to make any tire
5 impressions or anything like that?

6 A. Well, the road was concrete, sir. We did not
7 see any tire impressions in the yard.

8 Q. Any footsteps, or footprints, I should say?

9 A. We saw some footprints; however, by the time I
10 got there, there were several Harris County Officials
11 that had been there; and the footprints that were there
12 may have been photographed. I'm not sure. We did not
13 take any --

14 Q. Castings?

15 A. -- castings.

16 Q. Just describe for the jury, if you would, what
17 casting is when we use that phrase.

18 A. A casting is a powder and water-type material
19 that when you mix it together and pour it into a
20 configuration, whether it be an indentation in the mud,
21 it's like making a cast or pouring a cast. When that
22 material hardens and you pick it up, you will have a
23 permanent copy.

24 Q. Kind of a reverse of what was there?

25 A. Right. It would be a replica of what the

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1 liquid poured into.

2 Q. Kind of like a plaster of paris?

3 A. From what I understand, it's the same thing the
4 dentists use in making dentures and that kind of stuff.

5 Q. How long did you stay out on the scene?

6 A. I arrived at about 3:00 o'clock and left about
7 11:30 that night.

8 Q. Based on your evaluation of the scene and the
9 years you've been in the homicide division, did you
10 formulate an opinion as to whether or not the shooting
11 of that person occurred there at that scene?

12 A. I'm not sure I have an opinion as to whether
13 that shooting occurred there or not. There was no blood
14 trail that indicated somebody had been dragged or
15 brought into that yard bleeding previous to entry into
16 the yard.

17 Q. Okay.

18 A. Based on that I would have to say, that in all
19 probability, it probably occurred in the yard.

20 Q. Well, if a person had been shot somewhere else
21 and they died, they would stop bleeding, right?

22 MR. MCCLELLAN: I object, unless he's an
23 expert in the area.

24 THE COURT: All right. Sustained.

25 Q. (BY MR. HILL) How many homicides have you

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1 investigated?

2 A. Fifty, approximately, seventy.

3 Q. And have you investigated homicides where
4 somebody has been killed in one location and their body
5 is found in a different location?

6 A. I don't recall right off the top of my head,
7 sir.

8 MR. HILL: May I approach the witness?

9 THE COURT: Yes.

10 Q. (BY MR. HILL) Detective Foltz, I'm going to
11 show you what's been marked for identification as
12 Defendant's 3, 4, and 5, ask you to take a look at
13 those.

14 A. Yes, sir.

15 Q. Do those photographs fairly and accurately
16 depict the surrounding area on the Lynchester address
17 that you went out to and conducted your crime scene
18 evaluation?

19 A. I recognize this photograph of the patio and
20 the chair. I recognize this photograph as the rear part
21 of the yard. I'm not sure about this particular
22 photograph. The gate's on the wrong side.

23 MR. HILL: Judge, after tendering them
24 back to the State, we move to introduce Defendant's 3,
25 4, and 5.

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1 MR. MCCLELLAN: No objection.

2 THE COURT: Defendant's 3, 4, and 5 are
3 admitted.

4 MR. HILL: Thank you, sir.

5 I have no further questions.

6 MR. MCCLELLAN: I have a couple, Your
7 Honor.

8 THE COURT: All right.

9 REDIRECT EXAMINATION

10 BY MR. MCCLELLAN:

11 Q. The gate shown in Defense Exhibit No. 5, is
12 that the gate where the body was found behind?

13 A. I recognize this big bush.

14 Q. The question was, is that the gate under which
15 you would go through to find the body of Mary Carmouche,
16 if you know?

17 A. No, sir, I don't think this is the gate.

18 Q. Let me show you State's Exhibit No. 49. Has it
19 been introduced into evidence, State's Exhibit 49?

20 A. I recognize this gate, sir.

21 Q. Does that fairly and accurately depict the gate
22 behind which the body was located?

23 A. That is true, sir.

24 MR. MCCLELLAN: At this time I offer into
25 evidence State's Exhibit 49.

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1 own personal experience is I did get mud on my shoes
2 while I was out there, sir.

3 MR. MCCLELLAN: I'll pass the witness,
4 Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. HILL:

7 Q. So it would be fair statement to say, when you
8 reflect upon the condition of the shoes of Mary
9 Carmouche, that it doesn't appear from State's Exhibit
10 No. 56 that those shoes touched the ground out there?

11 A. Those are very clean shoes on the bottom, sir.

12 Q. And aside from being drug, as was asked to you
13 or asked of you, if somebody were carrying that person,
14 then their shoes wouldn't be touching the ground,
15 either?

16 A. If somebody carried that person, no, I agree
17 with you, sir.

18 Q. I don't want to confuse the issue. State's
19 Exhibits 49, Mr. McClellan just asked you whether that
20 was the gate behind which Ms. Carmouche's body was
21 found?

22 A. That is correct.

23 Q. Now Defendant's Exhibit No. 5, that is a
24 photograph that is also taken out there, but not of this
25 particular gate, right?

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1 MR. HILL: No objection.

2 MR. MCCLELLAN: Tender to defense counsel.

3 THE COURT: State's 49 is admitted.

4 Q. (BY MR. MCCLELLAN) So, State's Exhibit 49 is
5 the gate behind which the body was found, as opposed to
6 Defense Exhibit 5, which is not the gate behind which
7 the body was found, correct?

8 A. State's Exhibit 49 is the gate that was -- the
9 body was behind State's 49.

10 Q. Okay. Let me show you what's been marked for
11 identification purposes as State's Exhibit 56 and ask if
12 you can recognize that?

13 A. Those are the shoes that the black female who I
14 found in the backyard was wearing.

15 MR. MCCLELLAN: At this time the State
16 would offer into evidence State's Exhibit 56.

17 MR. HILL: And I have no objection.

18 THE COURT: State's 56 is admitted.

19 Q. (BY MR. MCCLELLAN) Do you see any dirt, any
20 debris, anything on the shoes of Mary Carmouche?

21 A. They are very clean, sir.

22 Q. If the body of Mary Carmouche had been drug to
23 the backyard, would you expect to have found some debris
24 or dirt, whatever, on the shoes?

25 A. Given the muddy conditions that prevailed, my

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1 A. It's on the other end.

2 Q. You go ahead and tell me where Defendant's
3 Exhibit No. 5 would reflect at that location.

4 A. This is the neighbor's house.

5 Q. Right.

6 A. And if I'm looking at 9227 Lynchester, it would
7 be the neighbor to the right.

8 Q. Thank you.

9 MR. HILL: That's all I have, Judge.

10 MR. MCCLELLAN: I have nothing further,
11 Your Honor.

12 THE COURT: Ladies and gentlemen, if you
13 would, please go back in the jury room.

14 (Brief recess.)

15 (Jury is brought in and seated.)

16 THE COURT: Call your next, please.

17 MR. MCCLELLAN: State would call D. H.

18 Couch.

19 THE COURT: Ladies and gentlemen, this
20 witness has previously been sworn.

21 Proceed.

22

23

24

25

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1 D. H. COUCH,
2 having been first duly sworn, testified as follows:
3 DIRECT EXAMINATION
4 BY MR. MCCLELLAN:
5 Q. Could you state your name for the record,
6 please?
7 A. Officer D. H. Couch.
8 Q. Officer Couch, how are you employed?
9 A. With the -- I'm a police officer with the City
10 of Houston.
11 Q. How long have you been so employed?
12 A. Just about ten years.
13 Q. And how long have you been with the -- what
14 position are you currently assigned to?
15 A. I'm currently assigned to the homicide division
16 in the Crime Scene Unit.
17 Q. How long have you been with the Crime Scene
18 Unit?
19 A. About three years.
20 Q. Let me direct your attention, if I may, back to
21 December the 8th of 1998. Did you have an occasion on
22 that day to go to a location at 9227 Lynchester?
23 A. Yes.
24 Q. And is that located in Harris County, Texas?
25 A. Yes, it is.

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1 Q. And for what purpose did you go to that
2 location?
3 A. There was supposed to be a female that was
4 D.O.A. at the location.
5 Q. D.O.A., meaning dead on arrival?
6 A. Yes.
7 Q. Did you go to that location?
8 A. Yes, I did.
9 Q. Do you recall about what time of day that you
10 may have arrived there?
11 A. I got there at about 5:00 o'clock in the
12 afternoon.
13 Q. And what did you do when you initially arrived?
14 A. The homicide investigators from H.P.D. were
15 already there; and I met with them and we discussed what
16 the scene was, what we had.
17 Q. Okay. And did you document the scene by both
18 photographs, as well as video?
19 A. Yes, I did.
20 Q. Did you also prepare a crime scene diagram?
21 A. Yes.
22 Q. Can you tell us the location of where the
23 female was that you found at that location -- where she
24 was at the location?
25 A. She was located in a fenced-in area, kind of a

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1 backyard of a house that was for sale, that was vacant.
2 Q. All right. Did you examine the house to
3 determine whether or not it was locked or unlocked?
4 A. Yes, we looked; and there was no forced entry
5 in the house or windows.
6 Q. Was the house, though, locked where you -- or
7 was it open where people could walk in?
8 A. It was secure, as far as you could tell.
9 Q. Can you tell us what the weather conditions
10 were that day?
11 A. It was pretty cool; and it had rained pretty
12 heavily, I believe, the night before.
13 Q. Okay. And at the scene, did you recover any
14 item of evidence?
15 A. Yes, I did.
16 Q. Okay.
17 MR. MCCLELLAN: May I approach the
18 witness, Your Honor?
19 THE COURT: Please.
20 Q. (BY MR. MCCLELLAN) Let me show you what's been
21 marked for identification purposes as State's Exhibits
22 47, 48, 50, 51, 55, 52, 54, 57, 56, 49, and 58 and ask
23 you, do these photographs fairly and accurately depict
24 the scene as it appeared back on December the 8th, 1998?
25 A. Yes.

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1 MR. MCCLELLAN: Your Honor, I think some
2 of these may have already been introduced, but at this
3 time I would tender those to defense counsel for
4 examination.
5 MR. HILL: No objection.
6 MR. MCCLELLAN: State's Exhibits 47
7 through 58.
8 THE COURT: I don't believe you ever
9 mentioned 53. And for the record, previously admitted
10 were 47, 49, 52, 54, 56, and 57. And I understand we
11 can get this all straight; but look at 53, because you
12 didn't refer to 53 a minute ago. Do you have a 53 in
13 there?
14 MR. MCCLELLAN: Not part of this, so I'm
15 not tendering that at this time.
16 THE COURT: Not 53. I know some of these
17 have already been admitted; but as far as 47 and 52 and
18 54 through 58, any objection?
19 MR. HILL: No, sir.
20 THE COURT: State's Exhibits 47 through 52
21 and State's Exhibits 54 through 58 are admitted.
22 Q. (BY MR. MCCLELLAN) Officer, let me show you
23 what's been marked as State's Exhibit No. 46 and ask you
24 if you can identify that?
25 A. That's the crime scene I drew of the actual

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1 scene itself.

2 MR. MCCLELLAN: At this time, Your Honor,
3 the State would offer into evidence State's Exhibit 46,
4 tender to defense counsel for --

5 MR. HILL: No objection.

6 THE COURT: State's 46 is admitted.

7 Q. (BY MR. MCCLELLAN) Officer, let me show you
8 what's been marked as State's Exhibit No. 60. Are you
9 familiar with this Key Map area?

10 A. Vaguely.

11 Q. Does it show the area where Lynchester would
12 be?

13 A. Yes, I believe so, off of Highway 6.

14 Q. Can you show us the general area where that
15 would be, if you know?

16 A. Should be right in here.

17 Q. All right.

18 A. General area.

19 Q. Officer, on State's Exhibit No. 46, the -- can
20 you tell us where the street area would be on State's
21 Exhibit 46?

22 A. Do you want me to point it out?

23 Q. Yes. You might step down, if you could, for a
24 moment. Get on that side over there.

25 A. The street area.

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1 down.

2 Q. Now State's Exhibit No. 48, is that a
3 photograph that's taken from what direction, looking
4 what direction?

5 A. That's taken from the street, looking -- it's
6 going to be east. You're facing the gate.

7 Q. So is this looking -- if you were on the street
8 facing the gate area, would that be what your view would
9 be?

10 A. Yes, sir.

11 Q. And that's State's Exhibit 48?

12 A. Yes.

13 Q. And while you can't see the gate there, can you
14 mark the area where the gate would be behind, if you
15 can, on State's Exhibit 48?

16 A. Right on the picture?

17 Q. That's fine. So the gate would be in that
18 location?

19 A. Yes, sir.

20 Q. And this would be the view from the street?

21 A. Yes, sir.

22 Q. And State's Exhibit 49, can you tell the ladies
23 and gentlemen of the jury what that is a photograph of?

24 A. That's a photo of the actual gate itself.

25 Q. So this is Exhibit 49, showing this gate here?

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1 Q. The street area?

2 A. Right in front of the front yard here.

3 Q. Okay. So this would be Lynchester --

4 A. Yes, sir.

5 Q. -- Street. And off of Lynchester -- now, you
6 have a line like this on State's Exhibit 46. What does
7 that depict, or what purpose is that?

8 A. It's just to give you an idea. The picture is
9 not complete. This is the house. I didn't want to draw
10 the whole house in there.

11 Q. And that's because the scene area was to
12 the, I guess, south of the house?

13 A. Yes, that's the primary focus of the crime
14 scene.

15 Q. If the diagram really extended, it would be the
16 rest of the floor plan or whatever?

17 A. Yes, basically just a square.

18 Q. Okay. All right. So when you're on Lynchester
19 and you -- the gate is located where? You went through
20 to find the body located where?

21 A. The gate is right here.

22 Q. All right. And right in front of the gate you
23 have some design there. Can you tell the ladies and
24 gentlemen of the jury what that is?

25 A. It's like a paved brick pathway that they put

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1 A. Yes.

2 Q. And after going through the gate, State's
3 Exhibit No. 50 -- does State's Exhibit No. 50 show after
4 going through the gate initially?

5 A. Yes.

6 Q. And State's Exhibit No. 51, can you tell us
7 what position you were in and what direction you were
8 photographing when you photographed State's Exhibit 51?

9 A. Basically, I was standing right about here,
10 looking west, looking toward the gate on the inside of
11 the fence.

12 Q. Looking back this way?

13 A. Yes.

14 Q. So this is from the inside looking back toward
15 the street?

16 A. That's right.

17 Q. And State's Exhibit 52, can you tell us what
18 this depicts?

19 A. That's a picture of the complainant on the
20 ground.

21 Q. And State's Exhibit 55, what is shown in
22 State's Exhibit 55?

23 A. It's a picture of her hands, and under her
24 right hand is a live cartridge casing.

25 Q. Could you use this arrow and place it on the

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1 photograph to show where the live cartridge casing was
2 found?

3 A. State's Exhibit 55.

4 Q. And State's Exhibit 57, what does that depict?
5 Where were you and what direction were you
6 photographing?

7 A. I was standing right in here, looking east
8 toward the rear of the backyard.

9 Q. And that's 57. You're standing about here?

10 A. Roughly right here.

11 Q. Right in here, shooting back this direction?

12 A. Yes, sir.

13 Q. Right towards the depth of the yard?

14 A. Yes.

15 Q. Is the complainant shown here in the very
16 corner?

17 A. Yes, sir.

18 Q. You indicated you retrieved a live cartridge
19 casing?

20 A. Yes.

21 Q. Live bullet, excuse me. Let me show you what's
22 been marked for identification purposes as State's
23 Exhibit No. 89 and ask you if that is the bullet that
24 you recovered at the Lynchester address?

25 A. Yes, it is.

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1 Q. And were there other items of evidence
2 recovered, such as pieces of plastic in a bag?

3 A. Yes, sir.

4 Q. And your job is to recover all the items and
5 someone else to determine what significance they may
6 have to the case; is that correct?

7 A. That's right.

8 Q. The plastic that you recovered, did it -- what
9 condition was it in?

10 A. It looked to me like it had been there for a
11 while. It was dirty and dusty.

12 Q. Other than the -- well, did the bullet that you
13 found, that you recovered, did it appear to have any
14 debris as if it had been there for a while?

15 A. Not that I could tell, no.

16 Q. Was there any other item of evidence that you
17 recovered that appeared to be fresh for that scene?

18 A. That was -- the bullet was the only one that
19 looked fresh.

20 Q. Were you present when the body of the victim
21 there was moved?

22 A. Yes.

23 Q. And did you notice whether or not there was any
24 blood on the ground area there?

25 A. Not on the ground around it, no.

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1 MR. MCCLELLAN: At this time, Your Honor,
2 State would offer into evidence State's Exhibit 89 and
3 tender to defense counsel for examination.

4 MR. HILL: No objection.

5 THE COURT: State's 89 is admitted.

6 Q. (BY MR. MCCLELLAN) In addition to the live
7 bullet, did you recover certain other items of evidence?

8 A. Yes.

9 Q. And was one of those a fireplace tool, for lack
10 of a better word?

11 A. Yes, a poker.

12 Q. Let me show you State's Exhibit 58. Does it
13 show that fireplace poker?

14 A. Yes, it does.

15 Q. Could you take this arrow again and indicate on
16 there where that was found?

17 A. Okay.

18 Q. Now this, State's Exhibit 58, is a photograph
19 of what part of the diagram?

20 A. It's the -- in the front yard, just underneath
21 the first window.

22 Q. Over here?

23 A. Right there, yes.

24 Q. So this is not behind the fence?

25 A. That's right.

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1 Q. What about underneath?

2 A. There was some underneath the complainant, yes.

3 Q. So after the body was rolled over, there was
4 some blood underneath where she had been laying on top?

5 A. Yes, sir.

6 Q. Did you attempt to lift any latent prints from
7 any items there at the scene?

8 A. Yes, I did.

9 Q. What was that?

10 A. There was a gutter in front of the gate toward
11 the front yard, a window along the side there, right in
12 the gate entrance, and the gate handles themselves.

13 Q. Did you also prepare a scene video to record
14 the scene as it appeared back on December the 8th, 1998?

15 A. Yes, sir.

16 Q. Let me show you what's been marked as State's
17 Exhibit No. 59 and ask you if that is a copy of the
18 scene video that you prepared?

19 A. Yes, it is.

20 MR. MCCLELLAN: At this time, Your Honor,
21 the State would offer into evidence State's Exhibit 59
22 and tender to defense counsel for his examination.

23 MR. HILL: No objection.

24 THE COURT: State's 59 is admitted.

25 MR. MCCLELLAN: Can we show that video at

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1 this time, Your Honor?

2 THE COURT: Yes.

3 (Video playing.)

4 Q. (BY MR. MCCLELLAN) Does this then show the
5 house that the body was found?

6 A. Yes, sir.

7 (Video concluded.)

8 Q. Officer Couch, in relationship to the items
9 that you did recover, can you tell us where they were
10 submitted?

11 A. The live cartridge that I found was submitted
12 to the latent lab, and the three pieces of blue plastic
13 were submitted to the latent lab.

14 Q. And they were submitted to the latent lab for
15 what purpose?

16 A. To be examined for any kind of fingerprints.

17 Q. What about the fireplace poker? Was it
18 submitted there, also, or not?

19 A. Yes, it was. It was submitted to the latent
20 lab.

21 Q. Are you familiar with whether or not at a later
22 date the latch -- well, first of all, did you try to
23 lift prints off the gate latch?

24 A. Yes, sir.

25 Q. By the gate latch, we mean -- are you talking

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1 A. Just by looking at it and the way I could -- I
2 could feel it through the glove I had on.

3 Q. So you actually got down and touched the
4 clothing to see whether or not it was damp?

5 A. Yes.

6 Q. Could you confirm either through other reports
7 or other means what time period it had been raining the
8 night before, or are we actually talking about the early
9 morning hours of the 8th of December?

10 A. I'm not sure. I just know the night before we
11 had a lot of rain. I'm not sure exactly the time.

12 Q. If we're placing your arrival there at about
13 5:00 p.m., when you are referring to the night before,
14 are you talking about the evening of December 7th and
15 the early morning hours of December 8th?

16 A. Yes, I believe so, as far as I can remember.

17 Q. Do you know whether or not it rained on
18 December 6th at all?

19 A. I don't remember.

20 Q. When you looked at the condition of the body,
21 and you indicated that you observed some blood
22 underneath the complainant?

23 A. Yes.

24 Q. Can you tell us whether or not you made a
25 determination of whether or not that was transferred

164

1 about this thing?

2 A. Yes.

3 Q. Were you able to lift any prints off of the
4 gate latch?

5 A. No, I was not.

6 Q. Are you familiar with whether or not, the next
7 day, that the gate latch was removed to be submitted for
8 prints by another C.S.U. Officer?

9 A. Yes, sir, they advised me of that the next day.

10 MR. MCCLELLAN: I'll pass the witness,
11 Your Honor.

12 CROSS-EXAMINATION

13 BY MR. HILL:

14 Q. Officer, do you have -- when you arrived at the
15 scene, you got there about 5:00 o'clock in the
16 afternoon?

17 A. Yes.

18 Q. I'm going to show you what's been introduced as
19 State's Exhibit No. 54 and ask you, did you have an
20 occasion when you were out there evaluating the crime
21 scene to determine whether or not the clothing worn by
22 that woman was wet or dry?

23 A. To the best of my recollection, it was still
24 pretty wet or damp.

25 Q. How did you make that determination?

166

1 blood?

2 A. It looked like blood that had come out of her
3 wound.

4 Q. How did you make that determination that it
5 looked like it was blood that actually came out of her
6 wound?

7 A. It was basically laying -- the blood spot was
8 right underneath where she had been shot, as far as I
9 could tell.

10 Q. Could you determine whether or not there was
11 any blood or blood evidence on the shirt that she was
12 wearing?

13 A. I couldn't tell on that shirt. I didn't really
14 look that close at the shirt.

15 Q. Is that because the shirt was red, or was there
16 some other reason why you could not make that
17 determination?

18 A. I only remember she was facedown. And then
19 Dr. Carter, the M.E., came out and did all the
20 examination. We don't move them at all until the
21 medical examiner comes out.

22 Q. Has that always been the case, that the actual
23 medical examiner comes out to the scene?

24 A. Sometimes. Not all the time. Sometimes she
25 does come out to the scene.

167

1 Q. What caliber bullet was that introduced into
2 evidence as State's Exhibit No. 89?

3 A. It was a 9 millimeter Lugar.

4 Q. Did you canvass the area to determine whether
5 or not there were any witnesses?

6 A. That's usually the detective's responsibility.
7 I deal with the physical evidence at the scene.

8 Q. And the physical evidence that you deal with at
9 the scene is the determination of whether a particular
10 piece of -- or a particular item is significant to an
11 investigation that is made by the homicide investigators
12 or by you?

13 A. They're pretty much in charge of the scene.
14 They pretty much run the show. And we work together
15 kind of as a team, and they let me know if I need to
16 check something out.

17 Q. And I don't mean to diminish your
18 responsibilities, but is your role then to document and
19 retrieve items that have been pointed out to you by the
20 homicide investigators?

21 A. To some degree. It's up to me, also. But
22 usually, you know, if they find something out, they will
23 let me know. And if I find something out, I'll let them
24 know. We kind of work together; but technically, they
25 are in charge.

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1 Q. And in this instance, the only items you felt
2 had any significance were clearly the live bullet, the
3 fireplace poker, some items of plastic, a plastic bag,
4 and a gate latch?

5 A. The gate latch, I didn't recover that. I just
6 fingerprinted it.

7 Q. But obviously, you felt it was significant
8 enough to fingerprint it?

9 A. Yes.

10 Q. Also you made efforts to retrieve latent prints
11 from a gutter or downspout?

12 A. Yes, sir.

13 Q. Where was that gutter or downspout actually
14 located on State's Exhibit No. 46?

15 A. It was just west of the gate there, right where
16 that square is.

17 Q. Right in that area?

18 A. Yes, sir.

19 Q. Okay. The individuals that we see hanging out
20 across the street from the scene, is that fairly typical
21 once a Crime Scene Unit rolls up in a residential
22 neighborhood and you cordon off an area?

23 A. Yes, it is.

24 Q. Were those all people that appeared to be
25 connected somehow with the neighborhood?

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1 A. Yes, sir.

2 Q. Did you see the homicide detectives go over and
3 attempt to visit with any of those individuals to see if
4 they had seen any vehicles in the area the night before?

5 A. I'm not sure if I did or not.

6 Q. Thank you.

7 MR. HILL: I have no further questions.

8 REDIRECT EXAMINATION

9 BY MR. MCCLELLAN:

10 Q. Officer, in an attempt to lift any latent
11 prints, were you successful in lifting any usable prints
12 there at the scene?

13 A. No, I was not.

14 MR. MCCLELLAN: I have nothing further,
15 Your Honor.

16 MR. HILL: One last question, if I may.

17 RECROSS-EXAMINATION

18 BY MR. HILL:

19 Q. Did you attempt to retrieve any footprint
20 evidence?

21 A. No, not at that scene. There was a lot of
22 grass around here. I didn't see any footprint evidence
23 at all.

24 Q. Thank you.

25 THE COURT: Call your next.

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1 MR. MCCLELLAN: State would call Detective
2 Novak.

3 G. J. NOVAK,
4 having been first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. MCCLELLAN:

7 Q. State your name for the record, please.

8 A. G. J. Novak.

9 Q. How are you employed?

10 A. City of Houston Police Department.

11 Q. And how long have you been so employed?

12 A. Approximately twenty-nine years.

13 Q. How long have you been assigned to the homicide
14 division?

15 A. Nineteen years.

16 Q. Let me direct your attention back to December
17 the 8th, 1998. First of all, were you ever assigned to
18 do an investigation or assist an investigation in
19 relationship to a shooting that occurred on Lantern
20 Point Drive?

21 A. Yes, I was.

22 Q. What day were you assigned to assist in that
23 investigation?

24 A. December the 8th, 1998.

25 Q. And after being assigned, were you briefed by

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1 the detectives who had been originally assigned to that
2 investigation?

3 A. Yes, I was.

4 Q. At the time you were assigned, was Mary
5 Carmouche still missing?

6 A. Yes, she was.

7 Q. Did you have an occasion on December the 8th,
8 1998, to determine subscriber information for a
9 telephone number that had been given to you?

10 A. Yes, I did.

11 Q. Were you able to get information as to who the
12 subscriber was to that telephone number?

13 A. Yes, I was.

14 Q. As a result of that, were you able to locate an
15 individual?

16 A. Yes, I was.

17 Q. What person did you locate?

18 A. A female by the name of Robin Scott.

19 Q. Did you go to the location where Robin Scott
20 was employed?

21 A. Yes, I did.

22 Q. For what purpose did you go to that location?

23 A. To speak to her concerning that particular
24 phone number.

25 Q. Did you find out the location where Robin Scott

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1 to whether or not the body of Mary Carmouche had been
2 recovered?

3 A. Yes, I did.

4 Q. And did you attend the autopsy of Mary
5 Carmouche?

6 A. Yes, I did.

7 Q. During the time of this investigation, were you
8 working by yourself or with a partner?

9 A. I was working with my partner.

10 Q. And who was that?

11 A. Officer Henry Chisolm.

12 Q. And while at the autopsy of Mary Carmouche,
13 were certain items of firearms recovered?

14 A. Yes, there was.

15 Q. By whom?

16 A. Officer Chisolm.

17 Q. Was there also firearms evidence recovered at
18 the medical examiner's office that related to Terrence
19 Gibson?

20 A. Yes.

21 Q. And that was recovered by whom?

22 A. Officer Chisolm.

23 Q. And where was that evidence then taken?

24 A. That evidence was taken to the Houston Police
25 Department Firearms Lab for processing.

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1 lived?

2 A. Yes, I did.

3 Q. And do you recall what that address was?

4 A. It was in the 10,800 block of Fondren. I
5 believe it was Apartment 1023.

6 Q. While you were talking to Robin Scott, did she
7 make any telephone calls at your request?

8 A. Yes, she did.

9 Q. As a result of the telephone call that she
10 made, did you ask any other detectives to go to a
11 certain location?

12 A. Yes, I did.

13 Q. And what location did you ask them to go?

14 A. 12,800 Fondren, Apartment 1423.

15 Q. You said 12,800. You mean 10,000?

16 A. I'm sorry, 10,800 Fondren.

17 Q. Apartment what?

18 A. 1423.

19 Q. Did people go to that location, as far as you
20 know?

21 A. Yes, they did.

22 Q. Did you learn from Robin Scott who else lived
23 at that location?

24 A. Yes, I did.

25 Q. Later that day, did you receive information as

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1 MR. MCCLELLAN: May I approach the
2 witness, Your Honor?

3 THE COURT: You may.

4 Q. (BY MR. MCCLELLAN) Let me show you what's been
5 marked as State's Exhibit No. 90-A, an envelope, an
6 envelope that was prepared for the submission of items
7 of firearms. Is this an envelope that's prepared for
8 the submission of the items of evidence that was
9 recovered from the medical examiner's office?

10 A. That's correct, yes.

11 Q. Inside State's Exhibit 90-A, let me show you
12 what's been marked State's Exhibit 90 and State's
13 Exhibit 91 and ask you if these -- well, first of all,
14 State's Exhibit No. 90, is that an item recovered from
15 the medical examiner's office in relation to Terrence
16 Gibson that was submitted by Officer Chisolm to the
17 firearms laboratory?

18 A. Yes, it is.

19 Q. State's Exhibit No. 91, is this an item of
20 firearms evidence that was recovered from the medical
21 examiner's office in relation to this Mary Carmouche
22 that was submitted to the firearms laboratory?

23 A. Yes, it is.

24 MR. MCCLELLAN: At this time, Your Honor,
25 State would offer into evidence State's Exhibits 90 and

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1 91 and tender them to defense counsel.

2 MR. HILL: Judge, we'd object to the
3 introduction of both Exhibit No. 90 and 91. There
4 hasn't been a proper chain of custody made regarding the
5 recovery of items at the medical examiner's office.

6 THE COURT: Could you approach for just a
7 moment, please?

8 (Off-the-record discussion.)

9 Q. (BY MR. MCCLELLAN) On State's Exhibit 91, the
10 firearms evidence recovered from Mary Carmouche, did you
11 observe the autopsy?

12 A. Yes, I did.

13 Q. Did you observe the contents of State's Exhibit
14 No. 91 being removed from the body of Mary Carmouche?

15 A. Yes, I did.

16 Q. And was it after it had been removed by the
17 medical examiner that it was then turned over to Officer
18 Chisolm and yourself?

19 A. It was handed to Officer Chisolm, yes.

20 Q. And did you observe that?

21 A. Yes, I did.

22 MR. MCCLELLAN: At this time, Your Honor,
23 we again offer State's Exhibit 91.

24 MR. HILL: May I take the witness on voir
25 dire?

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1 to be a diamond stud earring in each ear. She had a
2 large necklace, or a necklace with a large initial of
3 "M" attached to the chain.

4 Q. Now while you were at that autopsy, did you
5 take Polaroid photographs of Mary Carmouche for the
6 purpose of identification?

7 A. Yes, I did.

8 Q. And was there a face of Mary Carmouche, as well
9 as two distinctive tattoos that were on her body?

10 A. Yes.

11 Q. Were those photographs then presented to anyone
12 to determine if they could identify who that person was?

13 A. Yes, they were.

14 Q. Did you present those photographs?

15 A. Yes, I did.

16 Q. And who did you present the photographs to?

17 A. To Mary Carmouche's father, James Carmouche.

18 Q. During your investigation, did you have an
19 occasion to -- well, first of all, did you know the name
20 of a suspect in the case?

21 A. Yes, I did.

22 Q. What was the name of the suspect?

23 A. Charles Mamou, Jr.

24 Q. Did you make an attempt to determine whether or
25 not there was a Charles Mamou living in Harris County,

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1 THE COURT: Yes.

2 VOIR DIRE EXAMINATION

3 BY MR. HILL:

4 Q. Detective Novak, when the item reflected in
5 State's Exhibit 91 was given to Detective Chisolm, was
6 it ever given back to the M.E.'s office for processing?

7 A. To my knowledge, no.

8 Q. Were you with Officer Chisolm from the time the
9 M. E.'s Office gave him this item until it was turned
10 over to H.P.D. firearms?

11 A. Yes, I was.

12 Q. Okay. Thank you.

13 THE COURT: State's 91 is admitted.

14 DIRECT EXAMINATION CONTINUED

15 BY MR. MCCLELLAN:

16 Q. Were you present during the autopsy of Terrence
17 Gibson?

18 A. No, I was not.

19 Q. During the -- concerning the autopsy of Mary
20 Carmouche, did you also -- can you tell us whether or
21 not you observed any items of jewelry or whatever that
22 were taken from the body?

23 A. Yes, I did.

24 Q. Could you describe those items of jewelry?

25 A. She had in each ear a diamond -- what appeared

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1 Texas?

2 A. Yes, I did.

3 Q. Were you able to obtain an address to where it
4 came back to a Charles Mamou?

5 A. Yes, I did.

6 Q. Did you go to that location?

7 A. Yes, I did.

8 Q. Did you determine whether or not Charles Mamou,
9 Jr. lived there?

10 A. Yes, I did.

11 Q. Did he?

12 A. No, he did not.

13 Q. Was there a Charles Mamou that lived there?

14 A. Yes.

15 Q. Who was that?

16 A. Charles Mamou, Sr., Charles Mamou, Jr.'s
17 father.

18 Q. What location did you go to to find Charles
19 Mamou's father?

20 A. 2600 Westridge.

21 Q. Could I ask you to step down for a moment?

22 Referring to State's Exhibit No. 78, could you stand to
23 the side so everybody can see as well as they can? Can
24 you show us -- and place a dot if you will -- where the
25 2600 block of Westridge is located?

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1 A. Should be in this area right here.

2 Q. You can have your seat.

3 (Witness resumes seat.)

4 Q. And do you see on State's Exhibit No. 78 the
5 Lantern Point Drive location?

6 A. Yes, I do.

7 Q. And is it marked with anything on the diagram?

8 A. It's marked with a red arrow.

9 Q. Okay. As a result of going to talk to Charles
10 Mamou, Sr., did you go to try to locate any other
11 person?

12 A. Yes, I did.

13 Q. And who did you try to locate?

14 A. An individual by the name of Terrence Dodson.

15 Q. And were you able to locate Terrence Dodson, or
16 was Terrence Dodson able to locate you?

17 A. I was able to locate Terrence Dodson through a
18 phone call that I received while in the homicide office.

19 Q. And who was that phone call from?

20 A. Terrence Dodson's sister.

21 Q. What's her name?

22 A. Stephanie Mamou.

23 Q. Did you have an occasion then to take a
24 statement from a Terrence Dodson?

25 A. Yes, I did.

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1 contact with any other person?

2 A. Yes, he did.

3 Q. Who was that?

4 A. It was an individual who was a cousin of
5 Terrence Dodson's by the name of Anthony Trail.

6 Q. And --

7 THE COURT: What was the name?

8 THE WITNESS: Anthony Trail, T-R-A-I-L.

9 Q. (BY MR. MCCLELLAN) And did you take a written
10 statement from Anthony Trail?

11 A. My partner took a written statement from him.

12 Q. And your partner is?

13 A. Henry Chisolm.

14 Q. On December the 10th, 1998, did you have an
15 occasion to show a photospread containing the photograph
16 of Samuel Johnson to any individuals?

17 A. Yes, I did.

18 Q. Who did you show the photograph spread to?

19 A. I showed it to an individual by the name of
20 Dion Holley and Kevin Walter.

21 Q. And where did -- was the photospread shown to
22 them at? Where were they at?

23 A. Dion Holley was in the hospital there at Ben
24 Taub, and Kevin Walter was at Hermann Hospital.

25 Q. And is State's Exhibit No. 82 the photospread

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1 Q. Was that a written statement, or what type of
2 statement was it?

3 A. It was a videotaped recorded statement.

4 Q. Prior to taking a statement from Terrence
5 Dodson, did he take you to any location in Harris
6 County?

7 A. Yes, he did.

8 Q. And did he identify any apartment for you?

9 A. Yes, he did.

10 Q. Whose apartment did he identify?

11 A. That was an apartment that belonged to an
12 individual by the name of Janicka Dicky at 12900
13 Fondren.

14 Q. Who else lived at that apartment where Janicka
15 Dicky lived, if you know?

16 A. An individual by the name of Samuel Lee
17 Johnson.

18 Q. Samuel Johnson?

19 A. Yes.

20 Q. Now, did you have an occasion to take the
21 statement from Samuel Johnson, or did someone else do
22 that?

23 A. Someone else took that statement.

24 Q. In addition to pointing out the location of
25 Samuel Johnson, did Terrence Dodson put you also in

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1 that you showed --

2 A. Yes, it is.

3 Q. -- that contained Samuel Johnson?

4 A. Yes, it does.

5 Q. And what position is he in?

6 A. No. 2.

7 Q. And did Mr. Holley identify anyone in this
8 photospread?

9 A. Yes, he did.

10 Q. Who did he identify?

11 A. The No. 2 photograph of Samuel Johnson.

12 Q. Did you also show State's Exhibit -- did you
13 show this, also, to Kevin Walter?

14 A. Yes, I did.

15 Q. Did he make an identification?

16 A. Yes, he did.

17 Q. Of the same person?

18 A. Yes.

19 Q. Did you also show State's Exhibit No. 80 to
20 both Kevin Walter and Dion Holley?

21 A. Yes, I did.

22 Q. And it contains a photograph of whom?

23 A. Chucky Mamou, Charles Mamou.

24 Q. What position is he in?

25 A. He's also in the No. 2 photo.

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1 Q. Did they identify -- well, first of all, did

2 Kevin Walter identify anyone in State's Exhibit 80?

3 A. Yes, he did.

4 Q. Who did he identify?

5 A. The No. 2 photograph, Charles Mamou.

6 Q. And did Kevin Walter identify anyone?

7 A. Yes, he did.

8 Q. And who did he identify?

9 A. The No. 2 photo of Charles Mamou.

10 Q. After the identification -- those
11 identifications had been made, what did you do next in
12 relation to the investigation?

13 A. Charges of capital murder were filed against
14 Charles Mamou, Jr.

15 Q. And would copies of those charges that are
16 warranted sent to any particular location?

17 A. They were sent to Louisiana for purposes of
18 arrest.

19 Q. And where in Louisiana? Do you recall?

20 A. Sunset, Louisiana, Lafayette Parrish.

21 MR. MCCLELLAN: I'll pass the witness,
22 Your Honor.

23 CROSS-EXAMINATION

24 BY MR. HILL:

25 Q. Detective Novak, bring me up to speed a little

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1 aspects of the case?

2 A. Well, basically, if I'm lead investigator and
3 things begin to sort of snowball or all come together at
4 one time. And if additional help is needed, we'll go to
5 the lieutenant and request whatever help. And they will
6 assign however many personnel needs to be assigned to
7 that case to handle those leads that are coming in.

8 Q. At the time you were assigned to the case, you
9 indicated Mary Carmouche was still missing?

10 A. That is correct, yes.

11 Q. Okay. So prior to the discovery of her body on
12 December 8th, what was your initial responsibility?
13 What did you do from the time that you were assigned the
14 case with your partner till the time you found out that
15 a body had been discovered?

16 A. We were told initially that a vehicle which the
17 complainants were in had been recovered in the 10800
18 block of Fondren, and it had been towed by the police
19 department to our print stall for processing. I called,
20 at the request of Sergeant Bloyd, our crime lab; and I
21 requested that a chemist be sent to that location, being
22 the print stall, along with a fingerprint classifier to
23 process the blue Lexus that was recovered in this case.

24 Q. Let me just stop you for a second, because you
25 talked about Detective Bloyd. Did you go to the

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1 bit in terms of, you first get assigned on this case
2 after there is some other initial detectives that are
3 handling the Lantern Point aspect of it, correct?

4 A. Yes, sir, there were primary detectives.

5 Sergeant Kip Bloyd and Officer Bob King were the primary
6 investigators at Lantern Point.

7 Q. Are they assigned because they're on duty at
8 that particular time that the call comes in?

9 A. We work on a rotation. There are six pairs
10 assigned to our squad, two a pair. We rotated from the
11 very top. Who's ever at the top or No. 1 will catch
12 whatever scene will come in that particular night.
13 We're on call on weekend duty every third month. When
14 the individual or the pair of detectives make that
15 initial scene there, they move to the bottom. The
16 second moves up to the No. 1 position, and it continues
17 that way until the No. 1 position gets back up to the
18 top.

19 Q. So Bloyd and King get primary responsibility.
20 And then, obviously, they're not going to be able to
21 handle the entire investigation. And you and Detective
22 Chisolm are assigned additionally?

23 A. That is correct.

24 Q. And each of you, as detectives in the homicide
25 division, take a different responsibility or different

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1 location and see the Lexus there on Fondren?

2 A. No, I did not.

3 Q. So the vehicle is transported to the stall
4 where they conduct all these examinations. Is that
5 where you first go and see the Lexus?

6 A. I did not assist in the process. I made the
7 initial notification.

8 Q. So you don't see the Lexus?

9 A. I see the Lexus later. I go there at a later
10 point in time, after the vehicle had been processed. We
11 were given some additional information, and we went to
12 the print stall or the storage lot facility and checked
13 the vehicle for what we were told might be there.

14 Q. You checked for narcotics, right?

15 A. That is correct.

16 Q. You indicated that in checking the subscriber
17 information, it came back for Robin Scott. Can you tell
18 me again the unit number? I know the address was
19 10800.

20 A. I said 1423, but I meant 1402.

21 Q. Okay. You indicated that you learned when you
22 met with Robin Scott who else lived there. She was
23 living there with her husband, Howard Scott?

24 A. That is correct.

25 Q. She first represented, though, that that was

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1 her brother?

2 A. That is correct.

3 Q. So she lied to you initially?

4 A. Yes.

5 Q. How far into the discussion with her did you
6 finally learn that, in fact, Howard Scott was not her
7 brother but her husband?

8 A. When we transported her to the police station
9 for the purpose of taking her statement from her
10 concerning her knowledge, she admitted to us -- of
11 course, we had Howard Scott transported to the homicide
12 office where he, too, was making a written statement.

13 Q. Hold up right there for a second. You're
14 transporting these two people. What type of vehicle are
15 they being transported in to homicide?

16 A. We transported Robin Scott in my police
17 vehicle, which is an unmarked Ford Taurus.

18 Q. How about Howard Scott?

19 A. I didn't transport Howard Scott. I believe
20 Sergeant Bloyd and Officer King transported him, and
21 they would be in an unmarked unit, also.

22 Q. When you arrived at Robin Scott's apartment,
23 was she there?

24 A. I did not go to Robin Scott's apartment.

25 Q. Who actually went to Robin Scott's apartment?

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1 Q. Where are the Polaroid photographs that
2 Mr. McClellan asked you about that you took at the
3 autopsy involving the chain and the diamond earrings?
4 A. Those were given to Mr. McClellan. They should
5 be in his possession.

6 Q. You indicated that you developed the name of a
7 suspect. Was there at some point during the course of
8 your investigation as you were investigating what took
9 place -- we'll have to wait for those Polaroids. When
10 you were investigating the circumstances at Lantern
11 Point, was there more than one suspect that was
12 developed or the name of more than one individual that
13 you were looking for?

14 A. No, not at that time.

15 Q. At a later time did you look for more than one
16 individual other than Mr. Mamou?

17 A. Yes.

18 Q. What is that person's name?

19 A. We -- there was an individual that --

20 Q. Can you just give me his name?

21 A. Terrence Dodson.

22 Q. Other than Terrence Dodson and Mr. Mamou, was
23 there a third individual you were looking at as a
24 potential suspect?

25 A. A Shawn England.

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1 A. That would have been Ted Bloyd, Sergeant Bloyd,
2 Officer King, and I think a Crime Scene Unit was
3 dispatched to that location, also.

4 Q. So maybe I missed this when you were just
5 explaining the situation, but who did you transport?

6 A. I transported Robin Scott.

7 Q. Robin Scott. Where did you meet Robin Scott
8 that you would transport her to homicide?

9 A. We went to her place of employment, which was a
10 public works water treatment plant at 69th and Sgt. M.
11 Garcia Boulevard.

12 Q. When you transported her to homicide, did you
13 indicate to her at that time that she was under arrest?

14 A. She was not under arrest.

15 Q. Did you indicate to her that she was not under
16 arrest?

17 A. There was no reason to indicate to her that she
18 was under arrest for anything.

19 Q. And at the time you took her down to the
20 homicide division, did you ever give her her legal
21 warnings?

22 A. No, I did not.

23 Q. And you were not involved with Howard Scott,
24 correct?

25 A. No, I was not.

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1 Q. How do you spell the last name?

2 A. I believe it's E-N-G-L-A-N-D.

3 Q. Okay. What about Samuel Johnson?

4 A. Samuel Johnson's name came up later in the
5 investigation.

6 Q. Were there any other names?

7 A. There was an individual by the name of -- did I
8 say Ced, C-E-D.

9 Q. I'm sorry?

10 A. Ced, an individual. C-E-D is all we had.

11 Q. So we have Charles Mamou, Ced, Terrence Dodson,
12 Shawn England, and Samuel Johnson?

13 A. That's correct.

14 Q. Were you familiar, through speaking with
15 Detective Bloyd, Detective King, perhaps the officers
16 who arrived at the scene at Lantern Point, about
17 basically what they believed had taken place?

18 A. We all felt it was a narcotics transaction that
19 went bad.

20 Q. From your perspective, based on the information
21 that you had and the way you were approaching this
22 investigation, were you of the impression that the
23 individuals that had originally occupied the blue Lexus,
24 that being Terrence Gibson and Dion Holley --

25 MR. MCCLELLAN: I'm going to object to

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1 what his impressions were, Your Honor.

2 THE COURT: Sustained.

3 Q. (BY MR. HILL) You were investigating it as a
4 drug deal gone bad?

5 A. That's what it was, sir, what we were
6 investigating, yes.

7 Q. Are you familiar with the penal laws of the
8 State of Texas at all?

9 A. Yes.

10 Q. Are you familiar with what essentially
11 constitutes an aggravated robbery?

12 A. Yes.

13 Q. Would you describe for the jury what that is,
14 please?

15 A. An aggravated robbery is when a firearm or a
16 deadly weapon is produced during the commission of a
17 robbery.

18 Q. And a robbery, so they might understand, is
19 what?

20 A. A theft of property.

21 Q. Okay. What about conspiracy? What does
22 conspiracy constitute, or how does one engage in a
23 conspiracy?

24 MR. MCCLELLAN: I'm going to object.

25 Calls for a legal conclusion.

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1 that being a misstatement of the law.

2 THE COURT: I believe he asked him -- I'm
3 not sure how the question was formed, but in his opinion
4 what it was. And it may well be a misstatement of the
5 law, but he asked his opinion.

6 Q. (BY MR. HILL) You indicated that as part of
7 your investigation, in fact, you learned an individual
8 named Charles Mamou, one of which was a Sr., the other
9 one was a Jr. And I believe you told me -- or you told
10 Mr. McClellan that you met with Charles Mamou, Sr.?

11 A. That is correct.

12 Q. Okay. Did you go to his home or his place of
13 employment?

14 A. Went to his home the first time.

15 Q. While there, at any time, did you request
16 permission to search for weapons?

17 A. No, I did not.

18 Q. Did you ask him whether or not he possessed any
19 weapons?

20 A. No, I did not.

21 Q. Was there another officer or detective with you
22 that did that?

23 A. Not to my knowledge. My partner, Henry
24 Chisolm, was with me; but I don't recall that question
25 being asked.

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1 THE COURT: Sustained.

2 MR. HILL: Judge, I believe he's indicated
3 he's familiar with the penal laws, and I'd like to go
4 ahead and offer up some evidence on that.

5 MR. MCCLELLAN: Same objection.

6 THE COURT: Sustained.

7 MR. HILL: That's also going to hold true
8 about asking him about engaging in organized criminal
9 activity?

10 THE COURT: Depends on your question.

11 Q. (BY MR. HILL) Are you familiar with what it
12 takes to constitute engaging in organized criminal
13 activity?

14 MR. MCCLELLAN: I'm going to object.
15 That calls for a legal conclusion, also.

16 THE COURT: Not this question.

17 You can answer it, sir.

18 Q. (BY MR. HILL) Do you know?

19 A. Yes.

20 Q. Just briefly tell the jury what that
21 constitutes.

22 A. When you're engaged -- it's basically when two
23 or more people come together and, in collusion with one
24 another, plan or scheme a certain act.

25 MR. MCCLELLAN: I'm going to object to

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1 Q. Do you know whether or not, in your presence,
2 any weapons were ever produced and shown to you or other
3 officers?

4 A. Not in my presence, no.

5 Q. When you -- we've named these different
6 suspects, Charles Mamou, Ced, Samuel Johnson, and Shawn
7 England. You indicated when you spoke to Mr. Dodson,
8 that was after you had met with Charles Mamou, Sr.; is
9 that correct?

10 A. That is correct.

11 Q. Mr. Mamou, Sr. had actually provided the
12 information to you about the identity of Terrence
13 Dodson, correct?

14 A. That is correct.

15 Q. And as far as you know, was Mr. Mamou in your
16 presence when he contacted Mr. Dodson to tell him you
17 were looking for him?

18 A. No, he did not.

19 Q. But when you met with Mr. Dodson, okay, did you
20 give him his legal warnings?

21 A. No, I didn't.

22 Q. And was Mr. Dodson the only individual that you
23 took a video recorded statement from?

24 A. That is correct, yes.

25 Q. And the other individual that had a statement

1 taken from them was an individual by the name of Anthony
2 Trail, correct?

3 A. That is correct.

4 THE COURT: Could you approach, please?

5 (Off-the-record discussion.)

6 THE COURT: Ladies and gentlemen, please

7 go back in the jury room for a moment.

8 (Off-the-record discussion.)

9 (Jury is brought in and seated.)

10 THE COURT: All right. Ladies and
11 gentlemen, we're going to adjourn for the evening. All
12 the previous admonitions are still in effect. Again,
13 you're not to discuss the case among yourselves or
14 anybody else. Again, do not make any kind of
15 independent investigation. If anybody attempts to talk
16 to you about the case, bring it to our attention
17 immediately. Do we have our passes?

18 I'm going to ask you return tomorrow
19 morning, 10:00 o'clock, same drill. Again, you're
20 welcome to bring coffee, doughnuts, that kind of thing.
21 For some reason the media has not found us out yet, and
22 that's fine. I believe they're concentrating on
23 something else going on in the courthouse. Any
24 questions? If not, would you please file out?

25 (Court adjourned at 5:18 p.m.)

1 THE STATE OF TEXAS)

2 COUNTY OF HARRIS)

3 I, Pamela Kay Knobloch, Official/Deputy
4 Official Court Reporter in and for the 179th District
5 Court of Harris County, State of Texas, do hereby certify
6 that the above and foregoing contains a true and correct
7 transcription of all portions of evidence and other
8 proceedings requested in writing by counsel for the
9 parties to be included in this volume of the Reporter's
10 Record, in the above-styled and numbered cause, all of
11 which occurred in open court or in chambers and were
12 reported by me.

13 I further certify that this Reporter's Record
14 of the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$ _____ and
18 was paid by Harris County.

19 WITNESS MY OFFICIAL HAND this the _____ day of
20 _____, 2000.

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Pamela Kay Knobloch, Texas CSR No. 1650
Expiration date: 12/31/2000
Official Court Reporter, 179th District Court
Harris County, Texas
301 San Jacinto
Houston, Texas 77002
713.755.6340

20 APPELLANT: CHARLES MAMOU, JR.
CAUSE NO. 800112

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REPORTER'S RECORD

VOLUME 19 OF 25 VOLUMES

TRIAL COURT CAUSE NO. 800112

CHARLES MAMOU, JR.) IN THE DISTRICT COURT

Appellant)

)

VS.) HARRIS COUNTY, TEXAS

)

THE STATE OF TEXAS)

Appellee) 179TH JUDICIAL DISTRICT

TRIAL-GUILT/INNOCENCE

On the 7th day of October, 1999, the following
proceedings came on to be heard in the above-entitled and
numbered cause before the Honorable Michael Wilkinson,
Judge Presiding, held in Houston, Harris County, Texas:

Proceedings reported by computer aided
transcription/stenograph machine.

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3

1 (Jury is brought in and seated.)

2 THE COURT: Ladies and gentlemen, when we
3 recessed yesterday, I believe the defense had this
4 witness on cross.

5 MR. HILL: Thank you, Judge.

6 CROSS-EXAMINATION CONTINUED

7 BY MR. HILL:

8 Q. Detective Novak, I just want to go over one
9 item again just to get a little chronology here. How
10 long after you met with Charles Mamou, Sr. -- spoke to
11 him -- did you receive a telephone call from Terrence
12 Dodson?

13 A. That would have been on the next day from the
14 first time that I spoke to Mr. Mamou, Sr.

15 Q. Can you give us your best recollection of when
16 you spoke to Mr. Mamou, about what time of the day, and
17 then tell us what time the next day you got a call from
18 Mr. Dodson?

19 A. We first spoke to Mr. Mamou at his place of
20 business. That would have been approximately 6:30, 7:00
21 o'clock in the afternoon. The following morning, I went
22 to his home and showed a photograph of Terrence Dodson
23 to Mr. Mamou. And later that afternoon, probably be
24 somewhere in the neighborhood of 3:00 or 4:00 o'clock in
25 the afternoon, I got a call from Stephanie Mamou.

4

1 Q. And just attach a date, if you would, please,
2 the date at 3:00 or 4:00 in the afternoon that you spoke
3 with Dodson. What date are we talking about there?

4 A. I would have spoke to Mr. Mamou, Sr., on
5 December the 8th, 1998. And then the phone call from
6 Stephanie would have been on December the 9th, 1998.

7 Q. Thank you. After receiving the telephone call
8 from Stephanie Mamou between 3:00 and 4:00, did you then
9 proceed to where Mr. Dodson lived?

10 A. Yes, I did.

11 Q. And that was with his sister, Stephanie?

12 A. That is correct.

13 Q. And it was after that that you took him around
14 and he showed you different locations within the City of
15 Houston?

16 A. That is correct.

17 Q. Now the location where he took you to meet
18 Janicka Dicky -- and she's related to Samuel Johnson,
19 correct?

20 THE COURT: I'm sorry. What's her name
21 again?

22 MR. HILL: Janicka Dicky.

23 THE COURT: Spell it.

24 MR. HILL: Janicka, J-A-N-I-C-K-A, Dicky,
25 D-I-C-K-Y.

5

1 THE WITNESS: I'm sorry.

2 Q. (BY MR. HILL) He took you to that location?

3 A. That is correct.

4 Q. And that location is 12900 Fondren?

5 A. Or 10919 Fondren, Apartment 2621.

6 Q. Could you give the jurors an idea of how far
7 away Samuel Johnson's apartment is from the apartment
8 that's occupied by Robin and Howard Scott?

9 A. Approximately a block to two blocks.

10 Q. Is it part of the same apartment complex?

11 A. Very close proximity, yes.

12 Q. You're not sure, though if it's Fondren Court
13 Apartments, or it may be a name of a different apartment
14 complex?

15 A. I'm not sure.

16 Q. Okay. In relation to where those two apartment
17 units are, where was the blue Lexus found?

18 A. It was found behind the apartment of Robin
19 Scott, the apartment of Robin Scott; and that would have
20 been the 10800 block.

21 Q. I'd like to ask you just a couple of questions
22 before I pass you back to the State regarding how you,
23 as a trained detective, present a photospread to
24 somebody. What is the protocol or the procedure that
25 you use in order to do that?

6

1 A. Well, we first prepare a photospread using six
2 photographs. One would be the person that we are
3 interested in. There is no particular position that I
4 put the suspect or the individual that I'm interested
5 in. I get five fill-in photographs of very similar
6 characteristics. We try to do skin color, facial hair.
7 If there is glasses, we'll try to find six individuals
8 with glasses, same height, and things of that nature.

9 Q. Okay. And when you take a photospread to an
10 individual's to see if they can effect an
11 identification, what do you say to that individual?

12 A. We basically tell an individual that we are
13 there to show a photospread. They are not obligated to
14 identify anyone or pick anyone out in that particular
15 photospread.

16 Normally, my procedure is I will --
17 depending on the place or the location, I will hand the
18 photospread facedown. And when -- or when I finish
19 telling him that he is under no obligation to identify
20 anyone, I ask him to look at that photograph, or that
21 photospread -- excuse me -- and if he sees anyone in
22 that photospread, to please tell me so.

23 Q. When you are taking the photospread out to a
24 prospective witness, are you explaining to that
25 individual, or would the person already have been told

7

1 by you the burden of proof of showing the photospread?

2 MR. MCCLELLAN: I object to how that
3 applies in general.

4 THE COURT: Rephrase it, please.

5 Q. (BY MR. HILL) In this particular case, when you
6 went out to show photospreads, do you tell prospective
7 witnesses why you're showing the photospread?

8 A. Yes, I do.

9 Q. And what do you say?

10 A. Well, it's for the purpose of identification to
11 see if he recognizes anyone in the photospread as the
12 person possibly involved in this offense.

13 Q. Okay. There is some minimal discussion or at
14 least statement made by you to the prospective witness
15 that you're investigating a particular crime, and that's
16 why you're there?

17 A. That is correct, yes.

18 Q. And when you show a photospread in a case -- in
19 this case -- you're not going to show that to anybody
20 that's incoherent, correct?

21 A. I'm not going to show it to who?

22 Q. Somebody that is incoherent, that cannot
23 understand what you're saying to them?

24 A. That is correct, yes.

25 Q. You're not going to show it to somebody that is

8

1 not able to relate back to you what they are seeing or
2 whether they can identify anybody, correct?

3 A. That is usually the case, yes.

4 Q. Now were you the individual that prepared the
5 photospreads where Samuel Johnson's photograph appeared
6 in the No. 2 position, as well as the photospread where
7 Charles Mamou's photograph appeared in the No. 2
8 position?

9 A. Yes, I am.

10 Q. Were there any other photograph spreads that
11 you prepared in this case?

12 A. No.

13 Q. Were you present when a photospread including
14 the person, Shawn England, was presented to anyone?

15 A. No, I was not.

16 Q. And what about photographs including the
17 photograph of a Terrence Dodson?

18 A. No, I was not.

19 MR. HILL: May I approach the witness,
20 Your Honor?

21 THE COURT: Yes.

22 Q. (BY MR. HILL) Detective, I'm going to show you
23 what Mr. McClellan has marked as State's Exhibit No. 88:
24 Can you attach a name to the person depicted in State's
25 Exhibit No. 88?

9

1 A. This is Terrence Dodson.

2 MR. MCCLELLAN: State would offer into
3 evidence State's Exhibit No. 88.

4 MR. HILL: We have no objection.

5 THE COURT: State's '88 is admitted.

6 MR. HILL: May I show it to the jury?

7 THE COURT: Yes.

8 Q. (BY MR. HILL) When you went to the scene on
9 Lynchester -- you went out there, correct?

10 A. No, I did not.

11 Q. Okay. But you did go to the Harris County
12 Morgue during the time that the doctors there performed
13 the autopsy?

14 A. Yes, I did.

15 MR. HILL: May I approach the witness
16 again?

17 THE COURT: Yes.

18 Q. (BY MR. HILL) Detective Novak, I'd like to
19 show you what's been marked for purposes of --
20 Defendant's 6, 7, and 8, and ask you if you recognize
21 those photographs?

22 A. Yes, I do.

23 Q. Okay. And what are they photographs of?

24 A. These are tattoos that were observed on the
25 body of Mary Carmouche.

10

1 Q. Okay.

2 MR. HILL: Judge, after tendering them
3 back to the State, we'd move to introduce Defendant's 6,
4 7, and 8.

5 MR. MCCLELLAN: No objection, Your Honor.

6 THE COURT: Defendant's 6, 7, and 8 are
7 admitted.

8 MR. HILL: No further questions. Thank
9 you, sir.

10 REDIRECT EXAMINATION

11 BY MR. MCCLELLAN:

12 Q. Detective Novak, in addition to the photographs
13 of the tattoos, did you also show a Polaroid photograph
14 showing the face of Marie Carmouche to her father?

15 A. Yes, I did.

16 Q. For the purpose of identification?

17 A. That is correct.

18 Q. Let me show you what's been marked as State's
19 Exhibit No. 92 and ask you if that is a photograph that
20 you showed to Mary Carmouche's father?

21 A. Yes, it is.

22 Q. Is that a photograph of Mary Carmouche?

23 A. Yes, it is.

24 MR. MCCLELLAN: At this time the State
25 would offer into evidence State's Exhibit 92 and tender

11

1 to defense counsel.

2 MR. HILL: No objection.

3 THE COURT: State's 92 is admitted.

4 Q. (BY MR. MCCLELLAN) I believe you said State's
5 Exhibit No. 88 is Terrence Dodson?

6 A. Terrence Dodson, yes, sir.

7 Q. Let me show you what's been marked as State's
8 Exhibit No. 87 and ask you if you can identify that?

9 A. This is Samuel E. Johnson.

10 Q. Okay.

11 MR. MCCLELLAN: At this time the State
12 would offer into evidence State's Exhibit 87 and tender
13 to defense counsel.

14 MR. HILL: No objection.

15 THE COURT: State's 87 is admitted.

16 Q. (BY MR. MCCLELLAN) Is Samuel Johnson known by
17 any other name, to your knowledge?

18 A. He also goes by the nickname of Bug, B-U-G.

19 Q. Did you have an occasion during your
20 investigation to talk to a person by the name of Anthony
21 Trail?

22 A. Yes, I did.

23 Q. Did you go to his apartment or location?

24 A. Yes.

25 Q. Did you see him?

13

1 look at the area of Lynchester in Harris County, Texas?

2 A. Yes.

3 Q. Can you tell us what the distance is from this
4 location on Ashford Point to a location on Lynchester?

5 A. It would be a guess on my part, but I would say
6 in the neighborhood of five to ten miles.

7 Q. Mr. Hill asked you whether or not you had a
8 procedure to show photospreads to people who are
9 incoherent. During your times in the homicide division,
10 have you submitted or shown a photospread to someone
11 who's in intensive care in the hospital?

12 MR. HILL: Judge, I'm going to object;
13 because I think the State's objection was it's not
14 relevant what generally happens.

15 THE COURT: It's overruled.

16 THE WITNESS: If they are in intensive
17 care and they are conscious, normally what we will do is
18 speak to the care provider, the nurse, and ask if he's
19 been given any type of medication or is heavily sedated.
20 If that's the case, we will not even attempt to show or
21 interview individuals like that.

22 Q. (BY MR. MCCLELLAN) Okay. Never had an
23 occasion where you made an initial attempt to show a
24 photospread, maybe follow it up later when there is
25 other times when he's more coherent, but made an initial

12

1 A. Yes, I did.

2 Q. Let me show you what's been marked as State's
3 Exhibit No. 61 and ask you if that fairly and accurately
4 depicts the location where you went to interview Anthony
5 Trail?

6 A. Yes, it is.

7 Q. Is the address up here the address you went to?

8 A. That is correct.

9 MR. MCCLELLAN: At this time, Your Honor,
10 the State would offer into evidence State's Exhibit 61,
11 tender to defense counsel.

12 MR. HILL: No objection, Your Honor.

13 THE COURT: State's 61 is admitted.

14 Q. (BY MR. MCCLELLAN) And the address you went to
15 to interview Anthony Trail was 12777 Ashford Point?

16 A. Yes, it is.

17 Q. And on this diagram there is a little black,
18 what appears to be a figure of a house. Is that in the
19 general location where you went to interview Anthony
20 Trail?

21 A. Yes, it is.

22 Q. What part of Houston, Harris County, is that
23 located in?

24 A. Deep Southwest Houston.

25 Q. Did I ask you to also examine a Key Map and

14

1 attempt to show a photospread when someone is under
2 medication?

3 A. No, I do not.

4 Q. Is that the practice of every homicide
5 detective?

6 MR. HILL: Judge, I would object to how he
7 would speculate.

8 THE COURT: Sustained.

9 MR. MCCLELLAN: I'll pass the witness,
10 Your Honor.

11 MR. HILL: No further questions.

12 THE COURT: You may stand down.

13 Call your next.

14 MR. MCCLELLAN: State would call Samuel
15 Johnson.

16 SAMUEL L. JOHNSON,
17 having been first duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. MCCLELLAN:

20 Q. State your name for the record, please.

21 A. Samuel L. Johnson.

22 Q. Mr. Johnson, how are you employed?

23 A. I'm employed with Orkin Pest Control.

24 Q. Do you have some gum in your mouth?

25 A. Yes, sir.

15

- 1 Q. Would you please dispose of it? Thank you.
2 How old are you?
3 A. Twenty-seven.
4 Q. Okay. And do you live here in Harris County,
5 Texas?
6 A. Yes, I do.
7 Q. Directing your attention back to December the
8 6th of 1998, did you know a person by the name of Kevin
9 Walter?
10 A. No, I don't.
11 Q. Did you know a person by the name of Dion
12 Holley?
13 A. No, I don't.
14 Q. Did you know a person by the name of Terrence
15 Gibson?
16 A. No, I don't.
17 Q. Did you know a person by the name of Mary
18 Carmouche?
19 A. No.
20 Q. Did you know a person by the name of Terrence
21 Dodson?
22 A. No, I don't.
23 Q. Or Tator?
24 A. No.
25 Q. Did you know a person by the name of Charles

16

- 1 Mamou?
2 A. No.
3 Q. Did you know a person by the name of Chucky?
4 A. Yes.
5 Q. Did you later come to learn his name was
6 Charles Mamou?
7 A. Yes.
8 Q. Do you see that person in the courtroom here
9 today?
10 A. Yes, I do.
11 Q. Could you point him out and briefly describe
12 something he's wearing today?
13 A. Black suit, red shirt.
14 MR. MCCLELLAN: Your Honor, may the record
15 reflect the witness has identified the defendant?
16 THE COURT: I'm sorry. What color shirt?
17 THE WITNESS: Red.
18 MR. MCCLELLAN: Would you like to have a
19 color analysis?
20 THE COURT: Not really. I'm just looking
21 to see if anybody had anything close to that over there.
22 MR. MCCLELLAN: Black male, I believe he
23 said.
24 THE COURT: You're requesting --
25 MR. MCCLELLAN: The record reflect the

17

- 1 witness has identified the defendant.
2 THE COURT: It will.
3 Q. (BY MR. MCCLELLAN) When did you first meet
4 Charles Mamou or Chucky?
5 A. It was about December sometime.
6 Q. You had never met or known him before?
7 A. No.
8 Q. Where did you meet him?
9 A. I met him at a friend of mine's.
10 Q. And this friend's name is what?
11 A. Shawn England.
12 Q. Shawn England?
13 A. Right.
14 Q. How long have you known Shawn England?
15 A. Oh, I know him through high school.
16 Q. Okay. Now are you from Houston, or where are
17 you from?
18 A. I'm from Houston.
19 Q. Okay. Do you have -- do you have any relatives
20 in Sunset, Louisiana?
21 A. No.
22 Q. Any connection to Sunset, Louisiana?
23 A. No.
24 Q. When you met Charles Mamou at Shawn England's,
25 when is the next time -- how long was it after that that

18

- 1 you saw him again?
2 A. It was a Sunday.
3 Q. Okay. Would it be the Sunday this incident
4 happened?
5 A. Yeah.
6 Q. Okay. And how did you come about seeing or
7 meeting with Charles Mamou then?
8 A. He came to my house.
9 Q. Where do you live?
10 A. 10919 Fondren.
11 Q. Do you know a person by the name of Howard
12 Scott?
13 A. Yes.
14 Q. And Robin Scott?
15 A. Right.
16 Q. Where did they live back then?
17 A. They lived on Fondren.
18 Q. Okay. About how far from where you lived?
19 A. Apartments across the street.
20 Q. Okay. How long had you known Howard and Robin
21 Scott?
22 A. I didn't know them that long, about a year or
23 so.
24 Q. Okay. And you're saying Charles Mamou came to
25 your house on Sunday?

19

1 A. Right.

2 Q. What time of the day, if you recall?

3 A. Right about 12:00, when the football game was
4 on.

5 Q. And what conversation did you have with Charles
6 Mamou at that time?

7 A. Asked me could I take him somewhere to meet
8 some people.

9 Q. What did you tell him?

10 A. I told him yeah, I take him.

11 Q. Did y'all leave then?

12 A. No.

13 Q. Why not?

14 A. The game was on, and I didn't have a ride. My
15 wife was gone in the car.

16 Q. What kind of car do you have?

17 A. I have a Chrysler Concord.

18 Q. What color?

19 A. Red.

20 Q. This is your car, or your wife's car, or both?

21 A. It's both.

22 Q. Let me show you what's been introduced into
23 evidence as State's Exhibit No. 40 and ask you if you
24 can identify that?

25 A. My car.

21

1 A. Was I ready to go.

2 Q. Did y'all leave then?

3 A. Yeah.

4 Q. When you left, who was driving the car?

5 A. I was.

6 Q. During this entire situation, who is driving
7 that car?

8 A. I was.

9 Q. Now where did y'all go?

10 A. We went to pick up his cousin.

11 Q. And you know the name of his cousin?

12 A. No, I don't.

13 Q. Would you recognize his photograph if you saw
14 him?

15 A. Yes.

16 Q. And let me show you what's been marked as
17 State's Exhibit No. 88.

18 A. Yes.

19 Q. Is that the person that you went and picked up?

20 A. Yes.

21 Q. And whereabouts did you go to pick up the
22 person in State's Exhibit 88?

23 A. Some apartments on the southwest side.

24 Q. Now the Fondren apartments, do you consider
25 yourself on the southwest side?

20

1 Q. Is that the car that you were driving then on
2 December the 6th, that Sunday?

3 A. Yes.

4 Q. Are you familiar with the type of car called an
5 Intrepid?

6 A. Yes, I am.

7 Q. Is the body style of an Intrepid and the body
8 style of this car similar?

9 A. Similar.

10 Q. But this is a Concord?

11 A. Right.

12 Q. After you told Charles that you could give him
13 a ride, you didn't have the car yet, did he stay or did
14 he leave?

15 A. He left.

16 Q. When is the next time you saw Charles Mamou?

17 A. It was later that evening.

18 Q. Okay. Do you have an idea about what time it
19 might have been?

20 A. No.

21 Q. Was it still light outside?

22 A. Yeah.

23 Q. And how did you meet him then?

24 A. He came back to my house.

25 Q. What did he say then?

22

1 A. Yeah.

2 Q. What part of town?

3 A. Yeah, southwest side.

4 Q. How far was it to go pick up this person? Do
5 you know?

6 A. Probably about five minutes away, five or ten
7 minutes away.

8 Q. And did you go to a house or an apartment?

9 A. Apartment.

10 Q. When you picked up the person that appeared in
11 State's Exhibit 88, what did y'all do then?

12 A. We left, went to a grocery store.

13 Q. Okay. This is where you first went after
14 picking him up?

15 A. Right.

16 Q. What did y'all do at the grocery store?

17 A. He bought a newspaper.

18 Q. Who is that?

19 A. Chucky.

20 Q. After you left the grocery store, where did you
21 go?

22 A. We went to Papa's Barbeque.

23 Q. How long from the time you left the grocery
24 store to the time you go to Papa's Barbeque?

25 A. I say about forty-five minutes.

23

1 Q. Okay. What are y'all doing during that time,
2 just riding around?

3 A. Riding around.

4 Q. Now, did Charles Mamou have a cell phone?

5 A. No, he didn't.

6 Q. Did you have a cell phone?

7 A. Yes.

8 Q. Is that the only cell phone that was in the
9 car, yours?

10 A. Yes.

11 Q. Did you observe what Charles Mamou was doing
12 with the newspaper as you were driving around?

13 A. He was cutting it up.

14 Q. What was he doing with the pieces he cut up?

15 A. He was putting it together.

16 Q. Okay. And did you see a bag that he put the
17 cut-up paper in?

18 A. Yes.

19 Q. Let me show you what's been marked as State's
20 Exhibit 31. Does this look familiar to you?

21 A. Yes.

22 Q. Is this the same or similar bag that Charles
23 Mamou was cutting up paper and putting it in?

24 A. Yes.

25 Q. And the paper was like this?

25

1 Mamou on the cell phone and someone else?

2 A. Yes, it was.

3 Q. Did he make any calls?

4 A. Yes.

5 Q. Was that prior to going to Papa's Barbeque?

6 A. Yes.

7 Q. And did you know where Papa's Barbeque was, or
8 did someone have to direct you there?

9 A. Direct me there.

10 Q. Who directed you there?

11 A. Chucky.

12 Q. You mean --

13 A. Charles Mamou.

14 Q. Now when you got to Papa's Barbeque, did you
15 meet up with another vehicle?

16 A. Yes.

17 Q. And what type of vehicle was that?

18 A. A Lexus.

19 Q. What color?

20 A. Gray, grayish blue.

21 Q. All right. And were there people in the Lexus?

22 A. Yes.

23 Q. How many?

24 A. Two.

25 Q. When y'all stopped in the parking lot, who got

24

1 A. Yes.

2 Q. Now when Charles Mamou came to your apartment
3 to ask for a ride, did he tell you what he wanted to do?

4 A. Yes.

5 Q. And what did he tell you he wanted to do?

6 A. He was going to buy some dope.

7 Q. And wanted you to take him to the location?

8 A. Right.

9 Q. And what were you going to get out of the deal?

10 A. I was going to get something out of it. I
11 don't know how much.

12 Q. You were going to get dope, or you were going
13 to get what?

14 A. Money.

15 Q. Did he promise you any certain amount of money?

16 A. No, he didn't.

17 Q. While he was cutting up the paper, what was the
18 guy -- well, first of all, when you picked up this guy
19 in State's Exhibit 88, what part of the car did he get
20 in?

21 A. Backseat.

22 Q. And what was he doing while y'all were driving
23 around and Charles was cutting the paper?

24 A. Just sitting there, nonchalant, talking.

25 Q. Are there any conversations between Charles

26

1 out of the Lexus?

2 A. Charles got out, and his cousin got out of my
3 car.

4 Q. All right. The question was, who got out the
5 Lexus?

6 A. The two guys that drove the Lexus back.

7 Q. How many people were in the Lexus there at the
8 Papa's Barbeque?

9 A. Two.

10 Q. They both got out?

11 A. Right.

12 Q. And out of your car, you said Charles Mamou and
13 Terrence Dodson?

14 A. Right.

15 Q. And where did these people meet?

16 A. Outside the Lexus.

17 Q. Now, did Charles Mamou take anything with him
18 when he got out of your car?

19 A. A bag right there.

20 Q. Okay. Did he bring the bag back to the car?

21 A. Yes.

22 Q. How long did the conversation last outside the
23 car?

24 A. About fifteen minutes at the most.

25 Q. And during that time, you did what?

27

- 1 A. I stayed in the car.
2 Q. Didn't get out?
3 A. No.
4 Q. Did you have your windows down where you could
5 hear what they were saying?
6 A. No, the windows was up.
7 Q. Okay. Let me show you what's been marked as
8 State's Exhibit 86. Have you ever seen that person
9 before?
10 A. Yes.
11 Q. And where did you first see this person?
12 A. At Papa's.
13 Q. He is one of the people getting out of the
14 Lexus?
15 A. Yes.
16 Q. And State's Exhibit No. 83 --
17 A. Yes.
18 Q. -- have you seen that person before?
19 A. Yes.
20 Q. And was he one of the people in the Lexus?
21 A. Yes.
22 Q. Out of the two, 83 and 86, who was the driver
23 of the Lexus at the time at Papa's Barbeque?
24 A. 83.
25 Q. So, this person was the driver?

28

- 1 A. Right.
2 Q. And this other person was the passenger in the
3 Lexus?
4 A. Right.
5 Q. Now after you -- after the people did the --
6 did Charles and the other guy in the backseat, did they
7 get back in the car?
8 A. Yes.
9 Q. Charles tell you what happened?
10 A. That it wasn't going down right there at
11 Papa's.
12 Q. So, where did y'all go then?
13 A. On some street off of either Collingsworth or
14 Cavalcade, somewhere else in that area.
15 Q. And how did you get there?
16 A. I drove.
17 Q. Did you know where to go?
18 A. No.
19 Q. So how did you know how to get there?
20 A. We followed the Lexus vehicle.
21 Q. Okay. And where did you stop then on either
22 Cavalcade or Collingsworth?
23 A. Strip center.
24 Q. What was located in the strip center? What
25 kind of stores are located in the strip center, if you

29

- 1 know?
2 A. I'm not for sure.
3 Q. Was the businesses open in the strip center or
4 not?
5 A. It was closed.
6 Q. Now what time are we talking about now? Do
7 you know?
8 A. No. It was nighttime.
9 Q. Dark outside?
10 A. Dark outside.
11 Q. And when you stopped at the strip center on
12 Cavalcade or Collingsworth, who got out of the Lexus?
13 A. The two guys in the picture you just showed me.
14 Q. And who got out of your car?
15 A. Charles and his cousin, the picture you showed
16 me.
17 Q. The person in the backseat --
18 A. The person in the backseat of my vehicle got
19 out.
20 Q. -- you knew to be Charles' cousin?
21 A. Right.
22 Q. How long were they outside of the car then?
23 A. About twenty to thirty minutes.
24 Q. At that time did Charles have -- Charles Mamou
25 have the bag with the cut-up pieces of paper in it

30

- 1 outside?
2 A. Yeah.
3 Q. When he got back inside the car, did Charles
4 say anything about what was happening or wasn't
5 happening?
6 A. No. He was pissed off, because it wasn't --
7 the deal wasn't going down then.
8 Q. Okay. So, what did y'all do then?
9 A. We drove his cousin back to his house.
10 Q. That would be the person in State's Exhibit 88?
11 A. Right.
12 Q. Drove him back to where you picked him up?
13 A. Right.
14 Q. Did you ever see him again the rest of the
15 evening?
16 A. No.
17 Q. What did y'all do then?
18 A. Went back to my house.
19 Q. And what did you do at your house?
20 A. I went inside and ate, and he stayed outside my
21 apartment.
22 Q. Whereabouts outside your apartment?
23 A. On the patio.
24 Q. Did he have access to a phone out there on the
25 patio?

31

- 1 A. Yeah, he had my cell phone.
2 Q. And how long then were you at your apartment?
3 A. About forty-five minutes at the most.
4 Q. Did there come a time when you left your
5 apartment then?
6 A. Yes.
7 Q. And why did y'all leave?
8 A. We were headed to Bennigan's.
9 Q. Who told you you were going to go to
10 Bennigan's?
11 A. Charles.
12 Q. Did he tell you why?
13 A. We was going to meet up with the guys in the
14 Lexus.
15 Q. Did you drive to Bennigan's?
16 A. Yes.
17 Q. Bennigan's where?
18 A. Off Southwest Freeway, 610.
19 Q. Southwest Freeway and 610 are two different
20 things.
21 A. Well, 610 Freeway.
22 Q. Near any particular landmark?
23 A. Near Kirby, in between Kirby and South Main.
24 Q. When you got to that location, were the people
25 in the Lexus there?

32

- 1 A. Yes.
2 Q. And what did y'all do then?
3 A. We parked and went inside.
4 Q. So, in your car was who?
5 A. Me and Chucky, Charles.
6 Q. And you were driving?
7 A. I was driving.
8 Q. In the other car, the Lexus, how many people
9 were in that car?
10 A. Four.
11 Q. So there were two people that hadn't been there
12 before?
13 A. Right.
14 Q. Were the two people you've identified earlier
15 in the photograph, State's Exhibit 83 and 86, they were
16 there?
17 A. Right.
18 Q. Okay. Was there another male there?
19 A. Yes, it was.
20 Q. Let me show you what's been introduced in
21 evidence as State's Exhibit 76. You ever seen that
22 person before?
23 A. Yes.
24 Q. Was he there?
25 A. Yes.

33

- 1 Q. And State's Exhibit 77, you ever seen that
2 person before?
3 A. Yes.
4 Q. Was she there?
5 A. Yes.
6 Q. So all four of you went inside the Bennigan's?
7 A. Yes.
8 Q. All four of them, plus you. And in Bennigan's,
9 what did y'all do?
10 A. We sat down and ordered some food. They sat
11 down and ordered some food.
12 Q. Did you eat?
13 A. No, I didn't.
14 Q. And did Charles Mamou eat?
15 A. No.
16 Q. During the time at Bennigan's, was there any
17 time when some of the party that was there left and went
18 outside?
19 A. Yes.
20 Q. And who left and went outside?
21 A. Charles and the guy you showed me in the
22 exhibit.
23 Q. Okay. There were three guys, so was it --
24 which of these three guys?
25 A. 83.

34

- 1 Q. 83?
2 A. Yeah.
3 Q. So Charles Mamou and the person in 83 went
4 outside?
5 A. Right.
6 Q. And how long were they outside?
7 A. About ten minutes.
8 Q. After that, did anybody else -- did they come
9 back in?
10 A. Yeah.
11 Q. After they came back in, did anybody else
12 leave?
13 A. No.
14 Q. Did Charles ever leave by himself?
15 A. Yes.
16 Q. And where did he go?
17 A. I don't know.
18 Q. How did he leave?
19 A. He asked me to use my keys.
20 Q. Did you let him use your keys?
21 A. Yeah.
22 Q. And how long was he gone?
23 A. About fifteen, twenty minutes at the most.
24 Q. Did he come back?
25 A. Yes.

35

- 1 Q. After he came back, how long were y'all there
2 at Bennigan's before everybody left?
3 A. About twenty minutes.
4 Q. When you left Bennigan's, where did you go?
5 A. We circled the block going toward South Main.
6 We stopped at some of the office buildings.
7 Q. Who -- how did you know where to go?
8 A. He was telling me where to go.
9 Q. Who's he?
10 A. Charles.
11 Q. And what was the Lexus doing?
12 A. Following me.
13 Q. All right. And you stopped then around some
14 office buildings?
15 A. Right.
16 Q. Did anybody get out of your car?
17 A. I don't think so.
18 Q. Did anybody get out of the other car?
19 A. I don't think so.
20 Q. Did -- how did you -- what did y'all do there?
21 A. We paused for a minute, and then we left.
22 Q. Okay. Did anybody -- any words exchange
23 between anybody?
24 A. No.
25 Q. Where did you go then?

36

- 1 A. We went to a street nearby.
2 Q. Why did you go around the buildings, and then
3 why did you leave from the building?
4 A. I believe it was too dark or too much light.
5 Q. Well, who said that?
6 A. Charles.
7 Q. And you say you went to a street?
8 A. Right.
9 Q. Okay. Can you describe the street?
10 A. It was a long stretch of a street, not too
11 far --
12 Q. No buildings?
13 A. No buildings by it. Not too far from where the
14 buildings were.
15 Q. So what would -- there aren't any buildings
16 there on the street. What was there?
17 A. Grass.
18 Q. And when you got to that street, who was
19 telling you what to do and where to go?
20 A. Charles.
21 Q. Did he tell you where to turn?
22 A. Yeah.
23 Q. So, did you stop then on that street?
24 A. Right.
25 Q. Who told you to stop?

37

- 1 A. Charles.
2 Q. And was the Lexus continually following you
3 during this time?
4 A. Right.
5 Q. After you stopped there on the street, did you
6 then move your car?
7 A. I believe I circled it around.
8 Q. And did what?
9 A. Stopped.
10 Q. When you circled around and stopped, can you
11 tell me what the position -- what position the cars were
12 in?
13 A. Facing each other.
14 Q. When you stopped the car, who was the first
15 person to get out, if you know, out of either car?
16 A. I believe it was one of the guys in the Lexus.
17 Q. Okay. Did Charles get out of your car?
18 A. Yes.
19 Q. And how many guys got out of the Lexus?
20 A. Two.
21 Q. And which -- there were three guys in the
22 Lexus. Can you tell me which two guys -- which two guys
23 out of State's Exhibit 83, 86, and 76 -- which two guys
24 got out of the Lexus?
25 A. 83 and 76.

38

- 1 Q. So these two guys got out of the Lexus?
2 A. Right.
3 Q. And where do these guys go?
4 A. I believe to the back of the car.
5 Q. Back of which car?
6 A. The Lexus.
7 Q. Where does Charles Mamou go?
8 A. He went to the back of the car, also.
9 Q. Which car?
10 A. The Lexus.
11 Q. Did you notice whether or not Charles Mamou
12 took this bag with him?
13 A. Yes, he did.
14 Q. And by that, I mean State's Exhibit 31. Were
15 you still sitting in the car?
16 A. Yes, I was.
17 Q. What did you do -- was there a point in time
18 where you heard a gunshot?
19 A. Yes.
20 Q. Prior to hearing a gunshot, before hearing the
21 gunshot, what were you doing in the car?
22 A. I was attempting to open my hood, because one
23 of the guys in the Lexus was telling me to pop my hood.
24 Q. Okay. And did you have your door, driver's
25 door, open or closed?

39

- 1 A. It was halfway open.
2 Q. Okay. At the time that you heard the shot,
3 were you in or out of the car?
4 A. I had one foot out of the car and one foot in
5 the car.
6 Q. And how many people were outside of the Lexus?
7 There were four people in the Lexus to begin with. How
8 many of those four are outside?
9 A. Two.
10 Q. That's the two you've already identified?
11 A. Right.
12 Q. And from what direction did the shot -- when
13 you heard a shot, what direction did it come from?
14 A. From me looking, I was looking straight at the
15 car. So I was looking at the middle of the car; so a
16 shot was coming from left to right, I guess, to the left
17 and to the right.
18 Q. Came from what part of the car?
19 A. The backside.
20 Q. Backside. That's where the people were?
21 A. Right.
22 Q. How many shots did you hear?
23 A. I heard a lot of shots.
24 Q. Did you see anybody run after hearing the shot?
25 A. I seen one person run.

40

- 1 Q. And what direction did they run?
2 A. He ran -- if my car was parked, he ran to the
3 left of me in a field.
4 Q. So if you're sitting in your car looking at
5 their car --
6 A. Uh-huh.
7 Q. -- the man ran to that direction to your left?
8 A. To that left, if my car was facing --
9 Q. I understand, but let's say you're me. You
10 be -- all right. You're sitting as a driver, okay. And
11 I'm the driver of the Lexus, okay. What direction did
12 you see the person run? If the back of the Lexus is
13 back here, what direction do you see the person running?
14 A. To the left.
15 Q. That side, okay. After hearing shots and
16 seeing somebody run -- first of all, do you know which
17 person ran?
18 A. Yes.
19 Q. Okay. Out of the two people who were outside,
20 can you tell us which of these two people ran?
21 A. 83.
22 Q. Other than seeing him run into the field, do
23 you know where he ran to?
24 A. No, I don't.
25 Q. Did you ever see him again that evening?

41

- 1 A. No.
2 Q. After the shots at the back of the Lexus, what
3 is the next thing that you noticed happen?
4 A. I saw the driver of the car get shot.
5 Q. The driver of the Lexus?
6 A. At the time.
7 Q. Okay. Now the driver of the Lexus at this
8 location was who? Was -- I believe you identified this
9 guy as being the driver of the Lexus at Papa's?
10 A. Papa's.
11 Q. Okay. Out of the three guys, who was the
12 driver of the Lexus at --
13 A. 86.
14 Q. 86 was the driver of the Lexus at this street
15 location?
16 A. Right.
17 Q. And so, is this the driver you saw get shot?
18 A. Yes.
19 Q. How many shots were there at the time you saw
20 him get shot, if you know?
21 A. It was numerous shots.
22 Q. You don't know exact numbers, or do you?
23 A. No.
24 Q. What are you doing at the time you're seeing
25 this guy get out of the Lexus and being shot?

42

- 1 A. I'm sitting there, paranoid, like this.
2 Q. Okay. And are you still --
3 A. I'm still --
4 Q. One foot in and one foot out?
5 A. Yeah.
6 Q. After the shooting of the guy who's driving the
7 Lexus, what did you -- first of all, who did you see do
8 that shooting?
9 A. Charles.
10 Q. The person you've identified as Charles Mamou?
11 A. Right.
12 Q. And what -- after he did that shooting, what
13 did you see him do next?
14 A. He jumped inside the Lexus.
15 Q. And what were you doing that time? When he was
16 getting inside the Lexus, what are you doing?
17 A. I closed my door. And when he sped off, I sped
18 off behind him.
19 Q. Now you're facing the opposite direction?
20 A. Right.
21 Q. Or did he turn around, also? Did his car leave
22 the same direction it was facing?
23 A. Right.
24 Q. How did you then follow the Lexus?
25 A. I don't know how I turned and went, but I

43

1 followed him behind.

2 Q. Were you doing this pretty fast?

3 A. Yeah.

4 Q. And where did you follow him to?

5 A. To South Main and 610.

6 Q. At South Main and 610, what happened?

7 A. He kept straight, and I turned off.

8 Q. So he continued on South Main underneath 610?

9 A. Right.

10 Q. And you turned off where?

11 A. 610, going right toward Braeswood.

12 Q. And where did you go then?

13 A. I went home.

14 Q. About what time, if you know, did you get home?

15 A. It was real late.

16 Q. Okay. Did you ever see Charles Mamou again?

17 A. No.

18 Q. Now who was in the Lexus when Charles Mamou
19 drove off?

20 A. That girl.

21 Q. Did you ever see that girl again?

22 A. No.

23 Q. The next day, what did you do?

24 A. I went to work.

25 Q. Where were you working then?

45

1 Q. Well, at that time you had not talked to the
2 police or anybody, had you?

3 A. No.

4 Q. What did you think that meant?

5 A. To shut the hell up.

6 Q. Pretty self-explanatory, right?

7 A. Yeah.

8 Q. At that time, had you ever even told anybody,
9 the wife or anybody else?

10 A. No.

11 Q. Had you seen the news reports?

12 A. Yes.

13 Q. And on the news reports, were they describing a
14 car different than yours?

15 A. Yes.

16 Q. They were calling it an Intrepid?

17 A. Right.

18 Q. You weren't driving an Intrepid?

19 A. No.

20 Q. You think you might be able to skate on that
21 deal?

22 A. Yes.

23 Q. When was it that some police officers came to
24 your door?

25 A. I think it was that Wednesday.

44

1 A. At Orkin Pest Control.

2 Q. Did you receive any phone calls the next day,
3 which would be a Monday?

4 A. I think I received a phone call the next day,
5 which would be a Tuesday.

6 Q. So this happened on Sunday night, Monday
7 morning, right?

8 A. Uh-huh.

9 Q. Because Monday morning is the first day you
10 went to work?

11 A. Right.

12 Q. On that Monday, you didn't receive any phone
13 calls?

14 A. No, probably that Tuesday.

15 Q. The next day, on Tuesday?

16 A. Right.

17 Q. All right. And when you say received phone
18 calls, did you talk to anybody?

19 A. Yes.

20 Q. Who did you talk to?

21 A. Charles.

22 Q. And did he tell you where he was calling from?

23 A. No.

24 Q. What did he tell you?

25 A. He told me to shut the hell up.

46

1 Q. Okay. And do you remember what officers came
2 to your door?

3 A. No.

4 Q. Now when they came to your door, where was your
5 car?

6 A. My wife was gone to work in it.

7 Q. And did you then go with those officers down to
8 give a statement?

9 A. Yes.

10 Q. Prior to going down to give a statement, did
11 your wife -- did you call and ask your wife to come
12 back?

13 A. Yes, to pick up my son.

14 Q. And did she come back in your car?

15 A. Yeah.

16 Q. Did the police then examine your car?

17 A. They examined it a couple of days after I got
18 out of jail.

19 Q. Okay. And it was -- is that when these
20 photographs were taken?

21 A. Yeah.

22 Q. When you went down and gave the police a
23 statement, were you truthful about everything you told
24 him?

25 A. To my understanding.

47

1 Q. Well, did you tell them at that time when you
2 gave a statement that you did not see anybody with a
3 gun?

4 A. Yes.

5 Q. Is that true?

6 A. No.

7 Q. Is that a lie?

8 A. Yes.

9 Q. Tell us who all you saw with a gun or guns in
10 this event?

11 A. I just seen Charles with a gun.

12 Q. In the statement, did you tell them that the
13 hood of the Lexus was raised?

14 A. Yes.

15 Q. Was the hood of the Lexus raised?

16 A. No.

17 Q. You said someone tapped on your hood, or
18 someone told you to raise your hood?

19 A. Right.

20 Q. Do you know which of the people there did that?

21 A. Yes.

22 Q. Of the three guys, which would it be?

23 A. 83.

24 Q. Be this person?

25 A. Right.

49

1 A. Bug.

2 Q. Bug?

3 A. Bug, B-U-G.

4 MR. MCCLELLAN: I'll pass the witness,
5 Judge.

6 THE COURT: Ladies and gentlemen, we're
7 going to take a short break. If you would, please go
8 back in the jury room.

9 (Brief recess.)

10 (Jury is brought in and seated.)

11 THE COURT: Please be seated. Ladies and
12 gentlemen, when we recessed, the State passed on direct.

13 CROSS-EXAMINATION

14 BY MR. HILL:

15 Q. Sir, my name is Wayne Hill. You and I have not
16 met before, correct?

17 A. No.

18 Q. You and I have never spoken on the phone?

19 A. No.

20 Q. You've never given any statements to any
21 investigators that work with me, have you?

22 A. No.

23 Q. The only person you've spoken to about this
24 case since December 6th of 1998, have been police
25 officers and prosecutors, correct?

48

1 Q. And did you -- whenever someone told you to
2 raise your hood, what did you do?

3 A. I was going to pop my latch.

4 Q. Pop the latch?

5 A. Of my car, right.

6 Q. And to raise the hood on your car, you have to
7 pop the latch and you have to get out and lift it?

8 A. Right.

9 Q. Was the car -- was the hood ever lifted?

10 A. No.

11 Q. And was the car of the Lexus -- hood of the
12 Lexus ever lifted?

13 A. No.

14 Q. Let me show you State's Exhibit 62. Does that
15 appear to be familiar?

16 A. Yeah.

17 Q. Is that the Lexus that the people were in?

18 A. Right.

19 Q. Other than talking to Charles Mamou on that one
20 occasion when he called you on a Tuesday or so, did you
21 ever talk to him again?

22 A. Nope.

23 Q. Are you known by a nickname?

24 A. Yes.

25 Q. And what nickname is that?

50

1 A. Right.

2 Q. And how many times have you met with police or
3 prosecutors since December 6th of 1998?

4 A. Numerous times.

5 Q. Give me your best estimate of how many numerous
6 times would be.

7 A. About three times.

8 Q. During those meetings, would you be shown
9 photographs and basically asked questions about who
10 those people were and what roles they played?

11 A. Right.

12 Q. So this is not the first time in court today
13 that you're seeing these photographs that are being
14 presented to you, correct?

15 A. Right.

16 Q. Let's go back and start with some questions
17 regarding your background, all right. How old are you?

18 A. Twenty-seven.

19 Q. You're married?

20 A. Right.

21 Q. How many children do you have?

22 A. I have one.

23 Q. And how old is that child?

24 A. Five.

25 Q. And that's a young boy?

51

1 A. Right.

2 Q. And back on December 6th of 1998, y'all were
3 living out in Southwest Houston on Fondren?

4 A. Yes, right.

5 Q. Do you still live there?

6 A. No, I don't.

7 Q. What type of work do you do at Orkin Pest
8 Control?

9 A. I'm a termite technician.

10 Q. What does that mean?

11 A. Dig and treat termites.

12 Q. Whereabouts?

13 A. Residential.

14 Q. Throughout the city or --

15 A. Right, throughout the city.

16 Q. What does your area consist of? And I mean, do
17 you have an entire area you can drive up north, down
18 south? What are the perimeters of your area?

19 A. There is no perimeter.

20 Q. So it's wide open?

21 A. Right.

22 Q. Have you ever traveled up to the north side of
23 town?

24 A. No.

25 Q. You ever traveled out to the west side of town?

52

1 A. West side, meaning what?

2 Q. Out towards Katy?

3 A. Yeah.

4 Q. You ever traveled on the east side of town,
5 coming through downtown and going east towards Beaumont?

6 A. No.

7 Q. You ever traveled in the southwest part of town
8 where you live?

9 A. Right.

10 Q. How many years you been with Orkin?

11 A. Two years.

12 Q. And prior to that, what type of employment did
13 you maintain?

14 A. I worked in the laboratory.

15 Q. Where?

16 A. St. Joseph.

17 Q. Where?

18 A. St. Joseph Hospital.

19 Q. And that's downtown?

20 A. Right.

21 Q. And in order to get from where you were living
22 at the time to St. Joseph's, where would you -- what
23 would your normal driving route be?

24 A. 59 to 45, I believe. 59 to --

25 Q. You're looking at -- this is not a map of

53

1 anything?

2 A. No, I'm trying to think. 59 to Downtown
3 Houston.

4 Q. Did you used to live over on Fondren back when
5 you worked at St. Joseph's?

6 A. No, I didn't.

7 Q. Where did you live?

8 A. Broadway Square.

9 Q. That's down by Hobby Airport?

10 A. Right.

11 Q. How long did you live there?

12 A. About a year-and-a-half.

13 Q. You mentioned the names of several people
14 during your direct testimony. And we'll get to the
15 point where -- at some point you get arrested, right?

16 A. Right.

17 Q. And you're taken into police custody?

18 A. Right.

19 Q. What's the name of the officer that takes you
20 into custody? Do you know?

21 A. No, I don't.

22 Q. Is it a homicide detective?

23 A. Yes.

24 Q. How long did you stay in detention?

25 A. About two days.

54

1 Q. And was it at the tail end that you made a
2 statement to the police?

3 A. No, it was at the beginning.

4 Q. And then eventually you were released?

5 A. Right.

6 Q. Tell us a little bit about who Shawn England
7 is.

8 A. I played high school football.

9 Q. Where did you go to high school?

10 A. Worthing High School.

11 Q. Who is Shawn England, just a friend?

12 A. Yeah.

13 Q. You've been knowing him a long time?

14 A. Yeah.

15 Q. Describe him for us, if you would.

16 A. He's about six feet, black male, about 200
17 pounds.

18 Q. Does he still live in the Houston area?

19 A. Yeah.

20 Q. Do you still associate with him?

21 A. I haven't talked to him in about three or four
22 months.

23 Q. And the last time you spoke to him, where were
24 you?

25 A. His house.

55

- 1 Q. Whereabouts does he live in relation to you?
2 A. About five or ten minutes away.
3 Q. Out in southwest Houston?
4 A. Right.
5 Q. Area commonly referred to as Fondren Southwest?
6 A. Right.
7 Q. Do you know the name of the street?
8 A. Not offhand.
9 Q. Can you tell us the name of the street that is
10 closest to his house?
11 A. I believe it would be Airport, West Airport.
12 Q. West Airport. West Airport is a street that
13 runs east and west, correct?
14 A. Yeah.
15 Q. And it is south of West Belfort, correct?
16 A. Right.
17 Q. And it is south of Braeswood, correct?
18 A. Right.
19 Q. And if you were going due south on Fondren from
20 where you used to live, you would go down and you would
21 eventually hit West Airport?
22 A. Right.
23 Q. Which way would you turn, right or left?
24 A. Right, going towards the Beltway.
25 Q. And how long has Shawn been living out there?

56

- 1 A. Been living there quite a few years.
2 Q. And three or four months ago when you and Shawn
3 last saw one another, did you speak to him about your
4 role as a potential witness in this case?
5 A. No, I didn't.
6 Q. Have you spoken to him at all since December
7 6th of 1998, up until today's date?
8 A. Yes, I have.
9 Q. About this case?
10 A. No, I haven't.
11 Q. Have you told anybody, other than prosecutors
12 or police officers, about your role in this case?
13 A. No, I haven't.
14 Q. Didn't tell your wife?
15 A. No. She found out when homicide came to my
16 house.
17 Q. And after you got released and you went home,
18 you didn't explain this to your wife?
19 A. Yes, I did.
20 Q. What about Robin and Howard Scott? How do you
21 know those folks?
22 A. My child and their child usually go to the
23 movies with Shawn and his child on weekends.
24 Q. All right. How long have you known them?
25 A. About a year or so.

57

- 1 Q. So you had only met Robin and Howard Scott a
2 couple of months before December of 1998?
3 A. No, about a year or so.
4 Q. Well, obviously we're ten months later now. So
5 I'm trying to place it in terms of December 6th.
6 A. I don't have no estimated time, but it was
7 about a year.
8 Q. What kind of things would you do with them
9 other than take the kids to the movies?
10 A. That's it, basically.
11 Q. Now you indicated the first contact you had
12 with Charles Mamou was what day?
13 A. Sometime early December.
14 Q. Could that have been more like November 28th of
15 1998?
16 A. Could have.
17 Q. Right around the first of December, though?
18 A. It could have.
19 Q. And where was that that you first met
20 Mr. Mamou?
21 A. Shawn England's home.
22 Q. And this is the same home that you just
23 referred to as off of West Airport?
24 A. Right.
25 Q. Who all was there?

58

- 1 A. Me, Shawn, Charles, and I guess some of Shawn's
2 family members.
3 Q. What family members?
4 A. I believe his brothers and his sisters.
5 Q. What caused you to be there?
6 A. Going to the movies that evening.
7 Q. So you planned on being over to his house?
8 A. Right.
9 Q. And when you arrived there, how were you
10 introduced to Mr. Mamou?
11 A. This is a friend of mine named Chucky.
12 Q. Okay. And did you sit and talk with Mr. Mamou
13 at all, find out where he's from?
14 A. Yeah.
15 Q. And did you all discuss anything regarding any
16 kind of drug deals that you might do in the future?
17 A. No.
18 Q. How long did you sit and talk with Mr. Mamou?
19 A. About a couple of hours or so.
20 Q. Were y'all watching any sports or anything?
21 A. We probably did.
22 Q. Well, you sat there for a couple of hours.
23 Your purpose in going over there was to take the kids to
24 the movies, right?
25 A. Yeah.

59

- 1 Q. What time did you get over there?
- 2 A. It was that evening sometime, between 3:00 and
- 3 5:00.
- 4 Q. Between 3:00 and 5:00. And you stayed there
- 5 for two hours, so that's possibly somewhere between 5:00
- 6 and 7:00 o'clock at night, right?
- 7 A. Between 3:00 and 5:00. I stayed there between
- 8 3:00 and 5:00 o'clock, so --
- 9 Q. Oh, you're saying you stayed there between 3:00
- 10 and 5:00?
- 11 A. Yeah.
- 12 Q. So, did you take the kids to the movies?
- 13 A. Yeah.
- 14 Q. Where did you go?
- 15 A. We went to movies off Dunvale.
- 16 Q. Theatre 30 over there by Westheimer?
- 17 A. I believe that's it.
- 18 Q. And that would have been you and Shawn and the
- 19 kids?
- 20 A. Yeah.
- 21 Q. Your wife go with you?
- 22 A. Yeah.
- 23 Q. Now if that's right around November 28th, the
- 24 next time that you see this individual you know as
- 25 Charles Mamou or Chucky is December 6th?

60

- 1 A. I believe so.
- 2 Q. Well, I want you to try to be real specific
- 3 here. Tell me whether or not you recall having seen
- 4 Mr. Mamou in between the first meeting at Shawn
- 5 England's house and the time that you say he shows up at
- 6 your house on December 6th of 1998.
- 7 A. No, I never saw.
- 8 Q. So to you it's somebody you've met one time,
- 9 really don't talk about anything of any important,
- 10 nothing important, just kind of chitchat, right?
- 11 A. Right.
- 12 Q. And he just shows up one day at your house --
- 13 A. Right.
- 14 Q. -- in between November 28th and December 6th?
- 15 Do you talk to Shawn at all?
- 16 A. I don't believe I do.
- 17 Q. Does that mean you didn't or --
- 18 A. No, I didn't.
- 19 Q. So, tell us how Mr. Mamou shows up at your
- 20 house.
- 21 A. He showed up -- I believe it was a Sunday. I
- 22 was sitting there watching NFL; so it was right about
- 23 12:00 or 12:30, somewhere within that time frame. He
- 24 showed up.
- 25 Q. He knock on the door?

61

- 1 A. Knocked on the door.
- 2 Q. Who let him in?
- 3 A. My little brother.
- 4 Q. What's your brother's name?
- 5 A. Horace Johnson.
- 6 Q. How old is he?
- 7 A. He's nineteen.
- 8 Q. Okay. Who was home at the time?
- 9 A. Just me and my brother.
- 10 Q. Your wife and child were not in the house?
- 11 A. No, they was going to church.
- 12 Q. Had you spoken to Howard Scott at all in
- 13 between November 28th and December 6th?
- 14 A. Yeah.
- 15 Q. And in the course of talking to Mr. Scott
- 16 during that period of time, did you learn that Mr. Mamou
- 17 was still around?
- 18 A. No, I didn't.
- 19 Q. Now, so, Mr. Mamou shows up at your house. Did
- 20 he have a car?
- 21 A. No.
- 22 Q. He was on foot?
- 23 A. Right.
- 24 Q. What was he wearing?
- 25 A. I have no idea.

62

- 1 Q. You don't recall?
- 2 A. No.
- 3 Q. You invited him into your home?
- 4 A. Right.
- 5 Q. And what did y'all talk about?
- 6 A. We sat there and watched the game for a minute
- 7 and he asked me could I take him somewhere.
- 8 Q. Okay. Now prior to December 6th of 1998, you
- 9 had only seen Charles Mamou over at Shawn England's
- 10 house right?
- 11 A. Right.
- 12 Q. So he just shows up on your doorstep on
- 13 December 6th, and you invite him in the house and you
- 14 start talking?
- 15 A. Yeah.
- 16 Q. He asked you, Do you want to go ride?
- 17 A. Yeah.
- 18 Q. Is that the phrase he used?
- 19 A. No. Can we go meet somebody? Would you take
- 20 me to go meet somebody later on this evening?
- 21 Q. You don't have a problem with that?
- 22 A. No.
- 23 Q. Did you think it a-little odd at that point
- 24 that somebody just shows up at your doorstep on December
- 25 6th, while you're watching NFL Today, or the Sunday

63

1 football game, and he says, Would you mind taking me
2 someplace later?

3 A. Right.

4 Q. Did that strike you as odd?

5 A. Yeah.

6 Q. You didn't say no to him?

7 A. No.

8 Q. Now did your little brother, Horace, go with
9 you guys, or did he eventually leave?

10 A. He eventually left and went to work.

11 Q. How long does Mr. Mamou stay there with you
12 while you're watching the game before he leaves?

13 A. Probably about thirty minutes at the most.

14 Q. Did he have anything to eat with you at that
15 time?

16 A. No.

17 Q. When he leaves, does he say to you, Hey, could
18 you give me a ride now back to someplace?

19 A. No.

20 Q. Did you ask him, Where did you come from, who
21 you've been staying with?

22 A. No.

23 Q. And you didn't discuss that at all? He didn't
24 volunteer that information?

25 A. No, he didn't.

65

1 Q. What's your wife doing at the time she gets
2 home, when Mr. Mamou gets back?

3 A. She's doing her daily thing, whatever she does
4 during the day.

5 Q. Does she run a little business out of the place
6 there?

7 A. Yeah, she does hair.

8 Q. So was anybody there getting their hair done?

9 A. Probably was. I don't know.

10 Q. So Mr. Mamou shows up, and you invite him back
11 into the house?

12 A. Yeah.

13 Q. Introduce him to your wife?

14 A. Yeah.

15 Q. At any point does your wife and you step off to
16 the side and she asks you, Who is this guy?

17 A. I don't think so.

18 Q. She was cool with the fact this guy just comes
19 back, who she had only -- she met him at Shawn England's
20 house?

21 A. No.

22 Q. So this is a total stranger to her when he
23 shows up about 3:00 o'clock in the afternoon?

24 A. Yeah.

25 Q. So you say, Hey, I'm going to go riding with

64

1 Q. So he leaves after staying for about thirty
2 minutes, and you go on with the rest of your day?

3 A. Yeah.

4 Q. Do you talk to Shawn England at all between the
5 time that Mr. Mamou first shows up and he reappears
6 later on?

7 A. No, I didn't.

8 Q. You talk to Howard Scott?

9 A. No.

10 Q. Talk to Robin Scott?

11 A. No.

12 Q. You remember talking to any of your other
13 friends?

14 A. No.

15 Q. You didn't talk to Kevin?

16 A. No.

17 Q. All right. You know a guy by the name of --
18 that goes by the nickname of Ced or Ced or Sin or Skin?

19 A. No.

20 Q. Not a nickname you're familiar with?

21 A. No.

22 Q. About how much later is it that Mr. Mamou comes
23 back to your place?

24 A. Say about 3:00, 3:00 o'clock; because my wife
25 got home from church. It was right about 3:00 or 4:00.

66

1 this guy?

2 A. I'm fixing to go leave for a minute. I'll be
3 back.

4 Q. Leave for a minute? I'll be back?

5 A. Yeah.

6 Q. Do you explain to your wife where you were
7 leaving to go to?

8 A. No.

9 Q. No inquiries made about where you were going?

10 A. No.

11 Q. You just pick up and was gone?

12 A. She don't ask me about things like that.

13 Q. She don't ask you about things like that?

14 A. Huh-uh.

15 Q. You're kind of your own man?

16 A. Right.

17 Q. You got that understanding with her, right?

18 A. I hope so.

19 Q. She don't need to be asking about your
20 business?

21 A. Right.

22 MR. MCCLELLAN: I object to relevance,
23 Your Honor.

24 THE COURT: It's overruled.

25 Q. (BY MR. HILL) Right?

67

1 A. Right.

2 Q. Okay. So, you know, you go do your business;
3 you take care of your business and none of her business?

4 A. Right.

5 Q. You get the keys to the car, and you start
6 driving?

7 A. Right.

8 Q. Now you're not telling this jury that this is
9 the first time that you have ever been on -- well, let
10 me ask you this: What road do you take to get up to the
11 Northline Mall?

12 A. 45.

13 Q. How do you get to 45?

14 A. From 59 to 45.

15 Q. You go straight up Fondren and catch 59 North,
16 or do you take Braeswood to 610 and 45?

17 A. 59 North.

18 Q. Off of Fondren?

19 A. Right.

20 Q. Then you're not telling the jury this is the
21 first time you've ever driven on Highway 59 or 45?

22 A. No.

23 Q. Now how long does it take for you all to drive
24 up there?

25 A. About thirty minutes, if I'm driving the speed

68

1 limit.

2 Q. Okay. And if you're not driving the speed
3 limit, twenty-five minutes?

4 A. Right.

5 Q. You're not going to be doing 90, 100 miles an
6 hour?

7 A. No, I'm not.

8 Q. All right. So here you are in your red car
9 with Mr. Mamou. Prior to getting into the car with him,
10 after he comes back the second time, had you and he
11 spoken about what it was that you were going to go do?

12 A. Yes.

13 Q. Tell the members of the jury exactly what it
14 was that y'all were going to do.

15 A. Go buy some drugs.

16 Q. All right. And do you know the quantity of
17 drugs that the both of you were going to be buying?

18 A. No. It was large.

19 Q. By large, what do you mean?

20 A. Probably about a kilo.

21 Q. What's a kilo go for back on December of '98?

22 A. About 8 or \$9,000.

23 Q. Just so that I'm clear on this, do you know
24 what the word conspire means?

25 A. No, no, I don't.

69

1 Q. Did you have an agreement with Mr. Mamou to
2 engage in some type of illegal conduct?

3 A. Yes.

4 Q. You knew full well, when you left to go and, in
5 fact, throughout the day when you're with him, that you
6 were going to engage in some type of illegal conduct?

7 A. Yes.

8 Q. And you realized that conduct was a felony,
9 correct?

10 A. Right.

11 Q. And notwithstanding that, you went along; and
12 you had anywhere from about a twenty-five to
13 thirty-minute drive up to the north side of town, up to
14 the Northline Mall?

15 A. Right.

16 Q. What are y'all talking about?

17 A. Just regular talk. It wasn't nothing, talking
18 about no drugs or nothing like that.

19 Q. Okay. So just tell the members of the jury
20 again. Go step-by-step. I'm not going to interrupt
21 you. You get in the car by your apartment on Fondren,
22 and what happens?

23 A. We pick his cousin up. We drive to Northline
24 Mall, which would be where we had Papa's Barbeque.

25 Charles and his cousin got out of the car. The two guys

70

1 in the Lexus got out of the car. I don't know what they
2 talked about, but everybody got back in the car. And we
3 drove to an area on the north side of town, which would
4 be Cavalcade, in between Cavalcade and Collingsworth.

5 Q. Let me stop you there. When you go pick up his
6 cousin, how was he introduced to you? Do you remember a
7 nickname or anything?

8 A. No.

9 Q. Do you recall his name?

10 A. No, I don't.

11 Q. If I were to say the name, Terrence Dodson, or
12 Tator, would that jog your memory?

13 A. No.

14 Q. He's the person that you've identified in one
15 of these photographs?

16 A. Right.

17 Q. I believe it's No. 88?

18 A. Okay.

19 Q. Are you saying anything to Tator or to No. 88
20 while you're driving?

21 A. Small talk. It wasn't nothing substantial we
22 talked about.

23 Q. Well, had Charles told you, prior to leaving to
24 go, exactly how the process was going to take place?
25 Who were these people that you were meeting? Where

71

1 were they from? Did he tell you anything like that?

2 A. No, they was from the north side of town.

3 Q. Did it not concern you at all about who these
4 people were that you were going to be meeting?

5 A. No.

6 Q. You weren't concerned about your safety or
7 anything?

8 A. I was concerned about my safety all the time.

9 Q. Were you concerned about your safety that day?

10 A. I'm concerned about my safety everyday, so
11 yeah.

12 Q. So the answer is yes?

13 A. Yes.

14 Q. And did you take any special precautions --

15 A. No, I didn't.

16 Q. -- to ensure your safety?

17 A. No.

18 Q. Well, what was it that specifically you were
19 concerned about that day if you, as you say, are
20 concerned about your safety everyday? Let's
21 concentrate on December 6th, when you're driving up to
22 Northline Mall.

23 A. Uh-huh.

24 Q. What are you concerned about?

25 A. Something going wrong.

72

1 Q. Such as?

2 A. Somebody getting killed.

3 Q. Why would you, personally, think about that as
4 you were driving up to Northline Mall?

5 A. Because there is a drug deal going down. You
6 always think about something like that.

7 Q. Okay. That's pretty basic information, right?

8 A. Yeah.

9 Q. So you get up there and -- like, what are you
10 doing once you get up to Northline Mall and you're
11 sitting in your car for twenty or thirty minutes?

12 A. Wondering what was going on.

13 Q. Where is your field of vision? If I'm -- you
14 be you. All right. You're sitting in your car right
15 now?

16 A. Uh-huh.

17 Q. Is your car running?

18 A. Yes.

19 Q. Got the radio on, listening to a game?

20 A. No.

21 Q. Listening to music?

22 A. Yeah.

23 Q. Windows are up?

24 A. Yeah.

25 Q. Air-conditioning or heating on at that time?

73

1 A. Air-condition.

2 Q. Was it kind of a warm day?

3 A. It could have been, yeah.

4 Q. So, where are the individuals? First of all,
5 if you're sitting in your car, where is the blue Lexus?

6 A. If I was sitting in my car now, the Lexus would
7 be parked katty-corner toward me like this. This is my
8 car. This is their car.

9 Q. All right. Is their car coming towards the
10 driver's side or the passenger side?

11 A. Katty-corner to the passenger side.

12 Q. So you're having to look over to your right to
13 see their car?

14 A. No, I had good vision of what was going on.

15 Q. But I'm saying, if it's katty-corner and it's
16 on the passenger side, you're not going to be looking to
17 your left?

18 A. It wasn't direct to the passenger side.

19 Q. Kind of towards the front?

20 A. Right.

21 Q. But you're still looking off in a right
22 direction as opposed to a left direction?

23 A. Right.

24 Q. Are the three people that are standing by the
25 Lexus standing right in front of you?

74

1 A. It was four people.

2 Q. Okay. I'm sorry. There is three people from
3 the Lexus that get out?

4 A. Two people from the Lexus.

5 Q. And Charles and Terrence?

6 A. Right.

7 Q. Those are the four people. Do you see all four
8 of them?

9 A. Yes.

10 Q. And do you keep your eyes on them the entire
11 time, or are you doing other things?

12 A. I'm keeping my eye on them at all times.

13 Q. Making sure that nothing happened?

14 A. Yeah.

15 Q. What were you going to do if something
16 happened?

17 A. Probably would have left.

18 Q. So if something had happened right there, your
19 response would have been to leave and leave Charles and
20 Terrence there?

21 A. Yeah.

22 MR. MCCLELLAN: I object. It calls for
23 speculation about something that didn't happen.

24 THE COURT: What's the question?

25 MR. HILL: I asked him what he would do if

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1 something happened. He said he would leave. My
2 follow-up question was: In other words, you would leave
3 Charles and Terrence there if something had happened?

4 MR. MCCLELLAN: I object to speculation.

5 THE COURT: I'll allow it.

6 Q. (BY MR. HILL) Your answer would be?

7 A. I would leave.

8 Q. Leave them there?

9 A. Yeah.

10 Q. Okay. You indicate that after you're there for
11 some twenty or thirty minutes, do you see anybody making
12 any gestures? Were they moving their hands at all?
13 Are they standing there, talking?

14 A. Just standing there, talking.

15 Q. Are they -- are they talking with their hands
16 at all?

17 A. Could have been.

18 Q. You know, when somebody gets animated?

19 A. They could have been.

20 Q. Who was?

21 A. I didn't say nobody did, but I said it could
22 have been.

23 Q. What did you see Mr. Mamou do? I want you to
24 take your time, and tell the members of the jury what
25 you saw Charles do.

77

1 the person that was the cousin.

2 A. Okay.

3 Q. And at that point Mr. Mamou tells you, you got
4 to go someplace else?

5 A. Yeah.

6 Q. And do you follow that other car?

7 A. Yeah.

8 Q. The other car is the blue Lexus?

9 A. Blue Lexus.

10 Q. But at this point, I believe you said during
11 direct examination it was dark when you get over to
12 Cavalcade?

13 A. Yeah.

14 Q. How do you go to get from Northline Mall over
15 to Cavalcade from that location?

16 A. Huh?

17 Q. Is it south of where you're at, going back in
18 towards downtown?

19 A. Yeah, I believe we went 45 to 610, 610 North, I
20 believe.

21 Q. Took it around to the Cavalcade exit?

22 A. Yeah, I believe so. We ended up on the 59
23 exit.

24 Q. And just describe for us, where do you pull in?

25 A. We pull in -- it's a strip center, and the

76

1 A. Just regular talking. I just seen him regular
2 talking.

3 Q. I take it from the time he gets out of your
4 car --

5 A. From the time of my car, they got out, went to
6 the Lexus. Two guys in the Lexus got out, and the
7 passenger of my car got out, and Charles got out and
8 went to the Lexus.

9 Q. Where was Charles sitting in your car?

10 A. Passenger side.

11 Q. Front or back?

12 A. Front passenger.

13 Q. And his cousin was in the back passenger side?

14 A. Back passenger side.

15 Q. I'm sorry to interrupt.

16 A. They went to the car. I guess they stayed
17 there about ten or fifteen minutes, talking. I don't
18 know what they was talking about, because my windows was
19 up. And they came back to the car, meaning Charles and
20 the passenger of my car.

21 Q. And Charles got in the car, and Terrence got in
22 the car?

23 A. Right.

24 Q. Again, because I know you're not remembering
25 the name; but Terrence is the name that I'm attaching to

78

1 parking is going towards the street.

2 Q. Your car is right next to one another?

3 A. Possibly about a car length over.

4 Q. Side-by-side or --

5 A. Side-by-side. It's a car length in between
6 there.

7 Q. So, you stay in your car again?

8 A. Yeah.

9 Q. How many people get out of the Lexus?

10 A. Two.

11 Q. And your windows are still up?

12 A. Right.

13 Q. Are your lights on or off?

14 A. I can't recall.

15 Q. How well lit was the parking area?

16 A. It had a little bit of lights.

17 Q. Were you concerned at that point again with the
18 safety concern?

19 A. Yeah.

20 Q. Do anything special?

21 A. No.

22 Q. Once nothing happens there, who leaves first?
23 Who pulls off first?

24 A. I did.

25 Q. Leaving the Lexus behind?

79

1 A. Right.

2 Q. And that's when you take Terrence home?

3 A. Right.

4 Q. In between the point of Cavalcade and dropping
5 Terrence off, what are you saying?

6 A. He asked me if anything happened later on, will
7 I be able to drive the car to continue what we did
8 before?

9 Q. So, you're okay with continuing to try and make
10 this dope deal work?

11 A. Yeah.

12 Q. Explain to the members of the jury again
13 exactly what it was that you thought you were going to
14 get out of this deal.

15 A. I thought I was going to get something out of
16 it. I don't know how much, but I was going to get some
17 money out of it.

18 Q. Where was the money going to come from?

19 A. Possibly selling the drugs.

20 Q. Okay. Did Charles ever show you drugs that he
21 had that he was going to sell to them to get money?

22 A. No.

23 Q. Is that how you thought it was going to go
24 down?

25 A. Yeah.

80

1 Q. Okay. So you thought that Charles was going to
2 be selling drugs to them?

3 A. Yeah.

4 Q. And when Charles came to your house the second
5 time at 3:00 o'clock in the afternoon, did he have what
6 appeared to be a package that looked like it was drugs
7 wrapped up in tinfoil or plastic or anything?

8 A. No, he had that bag with him.

9 Q. Okay. And where was the bag?

10 A. He had it in his hand. It was wrapped up.

11 Q. So he comes to your door with the bag?

12 A. Uh-huh.

13 Q. And do you ask him, What you got a Victoria's
14 Secret bag for, man? Strike you as a little odd that
15 somebody would come to your house with a Victoria's
16 Secret bag?

17 A. He had already had that bag earlier in the day.

18 Q. So, when he came to your house the first time?

19 A. The first time he didn't have it.

20 Q. So, when he tells you -- does he tell you he's
21 going to sell drugs?

22 A. Yeah.

23 Q. And weren't you a little bit concerned about
24 where the drugs are going to be hidden, since they're
25 driving in your car? Isn't it concerning you a little

81

1 bit? What happens if I get pulled over by the police
2 and somebody in my car has got drugs?

3 A. Yeah.

4 Q. So do you say to him, Hey, man, make sure you
5 put the drugs in my trunk or something; so if we get
6 pulled over, nobody's going to find them?

7 A. No.

8 Q. So you're thinking that there is a drug deal
9 going down; but you don't even see anything, drugs or
10 anything that even appears to be any drugs?

11 A. Right.

12 Q. Okay. Let's fastforward a little bit. You've
13 dropped Terrence off at his apartment, right? And you
14 drive back to your place. Now your wife is home. And
15 is this when she's doing -- is she making dinner, or is
16 she working on somebody's hair in the apartment?

17 A. She had already made dinner. She was sitting
18 back, watching a movie.

19 Q. Your son is home?

20 A. Right.

21 Q. He's awake?

22 A. Right.

23 Q. And Chucky Mamou comes back with you, but he
24 steps out onto your patio area?

25 A. Right.

82

1 Q. Now again, are you sharing with your wife at
2 all why it is that this guy is there at the apartment
3 now in the evening time?

4 A. No, she never asked me.

5 Q. And you never volunteered it to her?

6 A. No.

7 Q. And you hand him the cell phone?

8 A. He already had my cell phone from the time we
9 were at Papa's Barbeque.

10 Q. And is he making a lot of phone calls on that
11 cell phone?

12 A. Yeah.

13 Q. How many?

14 A. I can't estimate how many.

15 Q. More than five?

16 A. Could be.

17 Q. As many as ten?

18 A. No.

19 Q. Somewhere between five and ten?

20 A. Between one and five.

21 Q. Between one and five. And do you hear what
22 he's saying during those conversations?

23 A. Yeah.

24 Q. Does it sound like he's setting up a drug deal?

25 A. Right.

83

- 1 Q. Do you know who he's talking to?
- 2 A. The guy that was in the Lexus.
- 3 Q. How do you know that?
- 4 A. That's who -- that's who we was with at Papa's
- 5 Barbeque.
- 6 Q. What about after Papa's Barbeque, before you
- 7 get to Cavalcade, any phone calls being made then?
- 8 A. Say it again.
- 9 Q. In between Papa's Barbeque and Cavalcade, the
- 10 strip center, any phone calls being made on your cell
- 11 phone?
- 12 A. No.
- 13 Q. After that, all the way up to the point you get
- 14 home with Mr. Mamou, is he using your cell phone?
- 15 A. Yes.
- 16 Q. Do you ever use the cell phone?
- 17 A. Yes, I use it all the time.
- 18 Q. Did you use it that evening?
- 19 A. No, why?
- 20 Q. You didn't make any phone calls at all?
- 21 A. No.
- 22 Q. Did you receive any telephone calls?
- 23 A. I don't think I did.
- 24 Q. And so, he has had your cell phone for how
- 25 long? At Papa's Barbeque until the time you get home

84

- 1 and he's on the patio, how much time are we talking
- 2 about?
- 3 A. About a couple of hours.
- 4 Q. And then you sit inside, and you eat with your
- 5 family while he's out on the patio?
- 6 A. Yeah.
- 7 Q. How long does he stay there?
- 8 A. Stayed at my house probably forty-five minutes
- 9 at the most.
- 10 Q. And at that point, does he knock on the patio
- 11 door?
- 12 A. He knocks on my door and says that we're going
- 13 to meet him at Bennigan's.
- 14 Q. And is your wife there at the time he says that
- 15 to you?
- 16 A. Yeah.
- 17 Q. No questions by her about why you're going to
- 18 Bennigan's, who you're meeting at Bennigan's?
- 19 A. I didn't tell her.
- 20 Q. So y'all go back downstairs and get into your
- 21 vehicle?
- 22 A. Yeah.
- 23 Q. And you drive there?
- 24 A. Right.
- 25 Q. How do you get to Bennigan's?

85

- 1 A. From my house, down Belfort to 610.
- 2 Q. Actually jump on South Post Oak and make a
- 3 left, correct? If you go down West Belfort, you're
- 4 heading east, and you go past the Kroger's on the right
- 5 and a little Taco Bell?
- 6 A. It's a --
- 7 Q. Underneath you make a left, and that's the
- 8 feeder road that jumps you right back up on the 610?
- 9 A. Right where the golf course is.
- 10 Q. Where there used to be a driving range?
- 11 A. Right.
- 12 Q. You get on 610, heading east?
- 13 A. Right.
- 14 Q. That's called the South Loop?
- 15 A. Right.
- 16 Q. And you get off what exit for Bennigan's?
- 17 A. Kirby.
- 18 Q. Can you tell me just approximately how many
- 19 miles it is from where Robin and Howard Scott live on
- 20 Fondren over by the Astrodome there?
- 21 A. About fifteen, ten miles at the most. I'm
- 22 estimating. I don't know.
- 23 Q. All right.
- 24 A. I don't calculate miles.
- 25 Q. It's a straight shot, though, from -- if you

86

- 1 were to take -- if you were at the intersection of
- 2 Fondren and Braeswood?
- 3 A. Right.
- 4 Q. If you went due east on Braeswood, that would
- 5 take you right up on 610 Loop South. And you get off at
- 6 Kirby or one of those South Main Streets, and you'd be
- 7 right by the Dome?
- 8 A. Yeah, yeah, got off at Kirby and looped around
- 9 and went to Bennigan's.
- 10 Q. All right. The first you hear about going to
- 11 Bennigan's is when he knocks on your door and basically
- 12 says, Can we ride now?
- 13 A. Yeah.
- 14 Q. And you're cool with that?
- 15 A. Yeah.
- 16 Q. Nothing has got to keep you at home; you're
- 17 just going to get in the car and go?
- 18 A. Yeah.
- 19 Q. What are you saying on the way over there?
- 20 A. Just regular small talk. We wasn't talking
- 21 about nothing major.
- 22 Q. Y'all did not mention anything about the dope
- 23 deal at this point?
- 24 A. No.
- 25 Q. Not saying about, well, now we're going to

87

1 Bennigan's; and now we're going to do it this way, or
2 that way?
3 A. No.
4 Q. And are you wondering where the dope might be
5 at this point?
6 A. Yeah.
7 Q. Okay. So you ask, and you ask him, you say,
8 Where is the dope, Chucky?
9 A. No.
10 Q. You get to Bennigan's. Everybody goes inside.
11 Everybody is sitting down talking?
12 A. Yeah.
13 Q. Any discussion of the dope deal at all?
14 A. No.
15 Q. Not one word?
16 A. No.
17 Q. Didn't somebody say something about, Hey, you
18 know, we've got to make this deal go down or anything?
19 A. I don't think so, no.
20 Q. And certainly, nobody's talking loud enough
21 that anybody else can hear?
22 A. Yeah.
23 Q. And how large is the table that the six of you
24 are sitting at? Is it a long table?
25 A. Possibly about that size where you're at.

88

1 Q. So if it were three people sitting like there
2 and maybe three people on the other side --
3 A. Exactly how it was.
4 Q. So, I mean, I wouldn't have to talk very loud
5 for somebody to hear me on the other side?
6 A. Right.
7 Q. If I'm talking like this right now, you can
8 hear what I'm saying?
9 A. Yeah, I can hear you.
10 Q. So y'all sit there. Who is it that initiates
11 going outside?
12 A. I believe it was the guy that you showed me the
13 picture.
14 Q. He says to Chucky, Hey, man, come on outside?
15 A. Yeah.
16 Q. So Mr. Mamou, in response to the guy that was
17 shown the picture of, they go outside?
18 A. Right.
19 Q. Now in that Bennigan's -- are there windows in
20 that Bennigan's?
21 A. Yeah.
22 Q. Are you sitting in an area where you're able to
23 see outside and see Mr. Mamou and the other individual?
24 A. We wasn't too close to the window. We wasn't
25 right next to the window; so I really couldn't see my

89

1 car or their car from the window, no, I couldn't.
2 Q. But did you see them, the two men?
3 A. Yeah.
4 MR. HILL: May I approach again, Your
5 Honor?
6 THE COURT: Yes.
7 Q. (BY MR. HILL) Just let me make sure are we
8 talking about No. 83, being the guy that went outside
9 with Mr. Mamou, do you know this guy as Dion Holley or
10 do you know?
11 A. Yes.
12 Q. If you don't know --
13 A. I don't know.
14 Q. They walk out together, and it's Mr. Holley
15 that says, Go outside; they walk out together?
16 A. Right.
17 Q. Y'all sit around, the other four of you that
18 are left there, talking about anything having to do with
19 why they're leaving? Don't tell me what was said.
20 A. No.
21 Q. So nobody's even fazed by the fact that these
22 two guys get up and walk outside?
23 A. No.
24 Q. Gone for a short while?
25 A. Yeah.

90

1 Q. Come back inside?
2 A. Yeah.
3 Q. They sit down. Everybody -- I know you didn't
4 have anything to eat, and I know Mr. Mamou didn't have
5 anything to eat, according to what you said. But are
6 the other people finishing up their meal?
7 A. I think the meal had just came when --
8 Q. So you have to stay there awhile for everybody
9 to eat?
10 A. They didn't finish their food, so --
11 Q. I'm not going to ask you what every person had;
12 but what were they having? Burgers, chicken, salads,
13 stuff like that?
14 A. Fries, sandwiches, and ice cream, and stuff
15 like that.
16 Q. Now you step outside. You get into your
17 vehicle. What's going to happen at that point? What's
18 the plan?
19 A. Go to a spot where it can go down, the deal can
20 go down.
21 Q. Let me ask you this: Just before you get back
22 into your vehicle to leave, you go up by the Lexus?
23 A. No, I don't. I seen a friend of mine from high
24 school I bumped into at Bennigan's, and we stopped and
25 talked.

91

1 Q. What was his name?

2 A. Robert, I believe.

3 Q. Last name?

4 A. I don't know.

5 Q. So when the others go out, are you kind of like
6 in that little area between the outer doors and the
7 inner doors, talking to him?

8 A. No, I was next to his car. He had an old
9 classic car that I liked. And I like looking at classic
10 cars, and we was talking about that. And the rest of
11 the party was next to my car and the Lexus.

12 Q. All right. So you're paying more attention to
13 the classic car and visiting with Robert than you are
14 what's going on over by the Lexus?

15 A. Yes.

16 Q. How long are you talking with your friend and
17 not paying attention to what everybody else is doing
18 over by the Lexus?

19 A. We talked possibly about fifteen minutes at the
20 most.

21 Q. Kind of talked about old times. Had you seen
22 this guy since high school?

23 A. No.

24 Q. It's been a long time?

25 A. A long time.

93

1 Q. Is that Westridge?

2 A. Could have been.

3 Q. Which way do you turn?

4 A. Right.

5 Q. Where do you go to?

6 A. We went to some of the office buildings to the
7 right of Westridge.

8 Q. You stay in your car again?

9 A. Yeah.

10 Q. Chucky is the only person in your car at this
11 point?

12 A. Right.

13 Q. Gets out?

14 A. I don't believe nobody got out.

15 Q. Okay. And I believe in your direct testimony
16 you said that the two cars pull in?

17 A. Right.

18 Q. And just pull out?

19 A. Yeah.

20 Q. Nobody's talking on the cell phone at that
21 point, are they?

22 A. They could have.

23 Q. You don't recall?

24 A. I don't recall.

25 Q. You don't recall whether or not you heard your

92

1 Q. And he went to Worthing with you?

2 A. Yes.

3 Q. Did he know Shawn?

4 A. I don't know.

5 Q. You indicated you played football with Shawn
6 when you were at Worthing?

7 A. Yeah.

8 Q. So at some point, Chucky and the others say,
9 Hey, man, come on. Enough with the talking. Let's go.

10 A. They possibly could have. I don't remember.

11 Q. You don't recall. You get into your vehicle,
12 and you drive. Just tell us what direction you drive.
13 What streets do you take?

14 A. We left there. We went up toward Main. It
15 would be going south from Bennigan's. And we made a
16 right on South Main.

17 Q. When you make a right on South Main, at that
18 point, where would the Astrodome be?

19 A. Be going north.

20 Q. Okay. And so, you get on South Main. And how
21 far do you drive on South Main before you stop?

22 A. It's a light. I believe there would be Buffalo
23 Speedway. There is a light right off of South Main.
24 And then the next light -- there is another light after
25 Buffalo Speedway.

94

1 cell phone go off or whether Chucky was talking?

2 A. I can't recall.

3 Q. How far was your red car from the blue Lexus
4 when you're at that office building? Are you kind of
5 next to one another but with a space in between at this
6 point?

7 A. Not too big of a gap or a space.

8 Q. But are you able to look -- like, if I'm in
9 your car and Mr. McClellan is in the other car, not this
10 distance but further apart, are we able to look at each
11 other like this?

12 A. Yeah.

13 Q. Which car pulls off first?

14 A. I believe I did.

15 Q. All right. And then how do you get out of the
16 parking lot of that office building to where you go to?

17 A. I think it was the back street, or something
18 like that, that you can go out of, an area you can go
19 out of the office buildings.

20 Q. Okay. And did you drive down that back street?

21 A. Yeah.

22 Q. Do you accelerate at any point? And by that I
23 mean, when you're on that -- when we're talking about
24 the back street, are we now talking about the road where
25 the shooting took place?

95

1 A. No.

2 Q. So tell me how you get to that road.

3 A. It's an exit space from the office building,
4 and you're going toward Westridge; and we made a right
5 onto Westridge and made a left next to, like, a church
6 or something like that.

7 Q. Okay. And that put you on the road?

8 A. Yeah.

9 Q. While you are on the road where the shooting
10 took place, it's kind of a long, winding road?

11 A. Right.

12 Q. Dark, no lights?

13 A. No lights.

14 Q. Astrodome -- now as you're driving --

15 A. The Astrodome would be to the west.

16 Q. Which would be on your right or your left?

17 A. My right.

18 Q. So you're going in this direction. Astrodome
19 is over here?

20 A. Right.

21 Q. While you're on that street, do you accelerate
22 quickly?

23 A. I don't think I did.

24 Q. Is there a point where you, on your own, drive
25 up and quickly turn around to be facing the other

97

1 A. Yeah.

2 Q. And when their vehicle stops, you pull up and
3 turn around?

4 A. Yeah.

5 Q. Nobody gets out of the Lexus to come over and
6 tell you to do that, do they?

7 A. No.

8 Q. Was Charles on the cell phone?

9 A. No.

10 Q. So had you spoken to Charles about this before.
11 As you're driving towards that area, was there a
12 discussion between the two of you that, we're going to
13 go ahead and make this look like we're jumping one
14 another?

15 A. No.

16 Q. Does he ever tell you that?

17 A. No.

18 Q. Anything odd in your mind at that point about,
19 why am I turning the car around to be facing them?

20 A. No.

21 Q. Does that just seem like a normal thing to do
22 at that point on that street?

23 A. Probably spur of the moment, I don't know.

24 Q. Possibly spur of the moment?

25 A. Yeah.

96

1 vehicle?

2 A. No, I don't think I did.

3 Q. So how is it that your vehicle then gets turned
4 around facing this other vehicle?

5 A. Charles told me to turn it around.

6 Q. Does Charles get out of the vehicle at all
7 before telling you to do that?

8 A. No.

9 Q. So as you're moving forward, how far behind you
10 is the blue car?

11 A. A couple of feet or so.

12 Q. A couple of feet?

13 A. Yeah.

14 Q. I mean, if you had jammed your brakes
15 unexpectedly --

16 A. Uh-huh.

17 Q. -- could have been an accident?

18 A. Yeah.

19 Q. So they're driving behind you?

20 A. Not right, right behind me. They're possibly
21 about three or four car lengths behind me.

22 Q. And at some point did you see their vehicle
23 stop?

24 A. Yeah.

25 Q. And are their lights on?

98

1 Q. And how come you stay in the car?

2 A. Because I wasn't involved in it --

3 Q. Well --

4 A. -- involved in the process of talking and
5 making a deal happen. I was just the driver.

6 Q. You were just the wheels for the deal?

7 A. Just the wheels.

8 Q. And I want to make sure we understand
9 something; because when you talked to the police, you
10 told them a bunch of lies, didn't you?

11 A. Yeah.

12 Q. And yet, the lies that you tell them, they're
13 being told after you've been arrested, correct?

14 A. Right.

15 Q. And are you -- when you're talking to them, is
16 it your personal belief that you're being charged with,
17 you know, capital murder, aggravated robbery, some type
18 of serious crime?

19 A. I was never told that.

20 Q. So you didn't think you were really in much
21 trouble at that point?

22 A. No.

23 Q. Because you were just the wheels?

24 A. Right.

25 Q. Was it your belief, as you sat there talking to

99

1 the police, that you had done nothing wrong?
2 A. I knew I had done something wrong. I drove the
3 car.
4 Q. But nothing that would implicate you or
5 incriminate you in a drug deal if you're just driving?
6 A. Well, they could have. They could have
7 implicated me as being the driver, but I never was
8 involved in the shooting process or nothing like that.
9 Q. Okay. So when Mr. McClellan was asking you
10 about popping the hood, part of it's true and part of
11 it's not true, right?
12 A. Right.
13 Q. So when you're sitting there talking to the
14 police, you told them that a guy from the Lexus came
15 over and told you to pop your hood?
16 A. Right.
17 Q. And actually tapped your hood, right?
18 A. Right.
19 Q. And you knew that by tapping the hood, that
20 meant to pop it?
21 A. Right.
22 Q. So you did it. You --
23 A. There isn't a latch inside of my car.
24 Q. And you got to get out and actually pull the
25 thing and raise up the hood?

100

1 A. Right.
2 Q. Yet, when you talked to the police, you lied
3 about -- or you say now that you lied about the Lexus'
4 hood being up?
5 A. Right.
6 Q. Was the Lexus' hood popped?
7 A. It could have been popped, because I was told
8 to pop my hood.
9 Q. It was the driver of the Lexus that told you to
10 do that?
11 A. The driver from Papa's Barbeque.
12 Q. All right. So you do that -- let me back up
13 for a second. You pull in; your cars are facing one
14 another; both headlights --
15 A. Right.
16 Q. -- illuminating the whole area pretty brightly?
17 A. Right.
18 Q. I mean, now, instead of being on a dark
19 roadway, it's pretty well-lit?
20 A. It's not well-lit. You can see to the right of
21 you, or to the left of you, or the front of you, but it
22 was dark in the back.
23 Q. How close are the cars, touching one another?
24 A. Probably two bicycle lengths.
25 Q. So you tell me how far away I would have to be

101

1 if I were in the front of the Lexus and you are the
2 front of the red car, and not where you're sitting as a
3 driver. If you're the front of the car, how far back do
4 I go before the Lexus is as far away from your car as it
5 was that night?
6 A. How tall are you?
7 Q. I'm six-two, or at least I like to say I'm
8 six-two.
9 A. Six-two, and possibly about three or four feet
10 more.
11 Q. I'm sorry. Am I as far away -- if I'm in front
12 of the Lexus, am I as far away from the front of your
13 car?
14 A. No. Come up a little bit. Right about there.
15 Q. Okay. So what would your estimate be of this
16 space? Is this ten feet away?
17 A. I can't estimate that.
18 Q. Okay. And is that how far away the cars remain
19 during the entire time that you're there, before you
20 leave?
21 A. Right.
22 Q. You're sitting there; pop your hood?
23 A. Right.
24 Q. You do that. And you open your door to step
25 out?

102

1 A. Right.
2 Q. Now have you opened your door the entire way?
3 Have you pushed it all the way open and you're getting
4 out?
5 A. Yeah.
6 Q. All right. And that's when you hear the first
7 shot?
8 A. Right.
9 Q. So when you hear the shot, where exactly is the
10 driver that's just done that on your car?
11 A. He's at the back of the car.
12 Q. Back of which car?
13 A. The back of the Lexus.
14 Q. So he's going toward the back of the Lexus?
15 MR. MCCLELLAN: I object, Your Honor.
16 That would be a misstatement. He said he was at the
17 back of the Lexus, and now he's going to the back of the
18 Lexus.
19 THE COURT: Rephrase it, please.
20 MR. HILL: All right.
21 Q. (BY MR. HILL) He comes up and taps on your
22 hood?
23 A. Right.
24 Q. That means he would have to be in front of the
25 Lexus when he does that?

103

- 1 A. Right, then he goes to the back of the Lexus.
2 Q. So you see him go back to the back of the
3 Lexus?
4 A. See him go back to the back of the Lexus.
5 Q. Does he walk on the driver's side?
6 A. Passenger's side.
7 Q. He walks on the passenger side of the blue
8 Lexus?
9 A. Right.
10 Q. So if this is the blue Lexus and you're sitting
11 right there, your passenger seat is kind of where that
12 fan is, correct?
13 A. Right.
14 Q. You say after the driver of the blue Lexus --
15 does he hit your hood on this side or --
16 A. My driver's side.
17 Q. He comes over, and he hits your hood like that?
18 A. And walks around to the passenger side of the
19 Lexus.
20 Q. So that would be this way, right?
21 A. Right.
22 Q. The passenger side?
23 A. Right.
24 Q. At what point do you lose sight of him because
25 of the darkness?

104

- 1 A. I don't lose sight of him.
2 Q. He's walking back this way. Do you see anybody
3 else back there?
4 A. Yes.
5 Q. And who do you see back there?
6 A. The guy he showed me in the picture.
7 Q. Which one?
8 A. I don't know the exhibit number.
9 Q. Let me show them to you, because we want to
10 make sure we get these right. All right. Which one is
11 that?
12 A. Driver.
13 Q. This is the driver, No. 86. Which one is
14 there?
15 A. The guy that tapped on my hood.
16 Q. No. 83. And that's Dion Holley?
17 A. Right.
18 Q. Okay. And who's this?
19 A. He was at the back of the car.
20 Q. 76 is at the back of the car already?
21 A. Right.
22 Q. So, No. 83 and No. 76 are at the back of the
23 car. Where is No. 86?
24 A. Driver.
25 Q. Do you see him inside the car?

105

- 1 A. Yes.
2 Q. How can you see him inside the car?
3 A. He's a big guy. You can see him inside the
4 car.
5 Q. Is the light on inside his car?
6 A. I don't think so.
7 Q. Do you notice whether or not he's sitting
8 looking straight ahead looking at you, or is he kind of
9 looking around to see what's going on, if you know?
10 A. I can't recall.
11 Q. What were you looking at?
12 A. The guy going to the back of the car.
13 Q. Why?
14 A. Wondering what was going on.
15 Q. Why?
16 A. Because there was a drug deal going on. I
17 wanted to know at all times what was going on.
18 Q. So, did you say something to him before?
19 A. No.
20 Q. Say something to Chucky before he walked
21 towards the back?
22 A. No.
23 Q. Tell Chucky to be careful?
24 A. No.
25 Q. So Dion Holley walks on -- I'm sorry. The

106

- 1 person that you described in that picture walks down the
2 passenger side of the blue Lexus?
3 A. Right.
4 Q. You say the other man is already at the back of
5 the Lexus?
6 A. Right.
7 Q. Tell the members of the jury how you see
8 Charles Mamou get from the passenger seat, where he's
9 sitting when he first pulls in, to wherever you last see
10 him?
11 A. He went from my passenger side, driver's side,
12 to the passenger back of the Lexus.
13 Q. So then that means that he would have walked in
14 front of the two cars?
15 A. He would have walked in front of the Lexus car
16 from my passenger car.
17 Q. So that necessarily means he walked in between
18 the two cars?
19 A. No, he didn't. He walked to the back of the
20 car, to the back driver's side of the car.
21 Q. Oh, I'm sorry. I thought you said the
22 passenger side initially?
23 A. Well, the back -- well, the back driver's side
24 passenger seat of the car.
25 Q. And does he stop there?

107

1 A. Yeah.

2 Q. And what occurred? What do you see happen?

3 A. They talked for about a minute or two minutes.

4 Some shots was fired, and I seen the guy in Exhibit 76
5 fall.

6 Q. Okay.

7 A. And I seen the guy -- I believe it was 83 -- he
8 ran to the fields.

9 Q. Uh-huh. Now is this the first time we're
10 hearing about you seeing the guy fall?

11 A. Say it again.

12 Q. Is this the first time we're hearing about you
13 seeing the guy fall?

14 A. That's all I can remember. I have dreams about
15 that, seeing that guy fall.

16 Q. And you would have told the police that, right?

17 A. Yeah.

18 Q. And you would have told the police how you saw
19 the guy run off into the field?

20 A. Right.

21 Q. So, you know at that point that something is
22 happening?

23 A. Yeah, I can hear gunshots firing.

24 Q. Where do you see Mr. Mamou at that point?

25 A. Shooting.

108

1 Q. Okay. At what point are you talking about?

2 A. What you mean, what point?

3 Q. The guy's already ran off to the field?

4 A. Right.

5 Q. The other guy you see fall?

6 A. Right.

7 Q. What do you see the driver of the Lexus doing?

8 A. I believe he was trying to get out of the car.

9 Q. What did you see?

10 A. I seen Charles go and shoot.

11 Q. Okay. Step-by-step, what do you see?

12 A. Step-by-step, from the time of the shooting,
13 they was at the back of the Lexus. And I don't know who
14 got shot first; but the guy in Exhibit 76, I seen him
15 fall completely to the slab, and I also seen the guy
16 running into the fields.

17 Q. Uh-huh.

18 A. I believe he was shot at the time. Then the
19 guy --

20 Q. Why do you say you believe he was shot at the
21 time?

22 A. Because he was running off, holding his arm
23 like this.

24 Q. Okay. So he would have been shot, according to
25 what you're just saying?

109

1 A. Right.

2 Q. Before he went into the field?

3 A. Right.

4 Q. When he was close to the blue Lexus?

5 A. Right.

6 Q. Go ahead.

7 A. And the guy that was driving the Lexus at the
8 time, I believe he was attempting to get out of the car.

9 Q. Okay. Stop right there. I want you to go
10 slowly through this part. You said you thought that
11 the guy in the Lexus was trying to get out?

12 A. Right.

13 Q. What caused you to think that?

14 A. Because I seen his door open a little bit.

15 Q. As his door is opening --

16 A. Uh-huh.

17 Q. -- where is Charles?

18 A. Going toward the driver's side of the car.

19 Q. From what location?

20 A. From the passenger -- back driver's side.

21 Q. All right. This is very important. You see
22 the door of the Lexus opening?

23 A. Uh-huh.

24 Q. Charles is behind the door, going towards
25 him --

110

1 A. Right.

2 Q. -- is that correct?

3 A. Right.

4 Q. Then what do you see?

5 A. Shots were fired into the window.

6 Q. Where -- how were the shots fired into the
7 window?

8 A. What you mean, how?

9 Q. Where was Charles standing in relation to the
10 car at that point?

11 A. Right in front of the car.

12 Q. So he had actually gone past the opening door?

13 A. Yeah.

14 Q. And is now -- so in other words, he was going
15 towards your car?

16 A. I have no idea.

17 Q. If he had continued walking in the direction
18 that he was up alongside the driver's side of the Lexus,
19 and your car had not moved from this location?

20 A. Right.

21 Q. Would he have come to your red car?

22 A. He could have if he wanted.

23 Q. Correct. If somebody walked in that direction,
24 it would be towards your car?

25 A. Right.

111

1 Q. So the door opens. Guy's trying to get out.
2 Does Charles run past that door?
3 A. No.
4 Q. Does he just walk past the door?
5 A. Yes.
6 Q. Is he looking at you? Is he waving to you?
7 Is he saying something to you?
8 A. No.
9 Q. Are you saying something to him?
10 A. No.
11 Q. Are you back in your car at this point?
12 A. No.
13 Q. You're just standing there watching?
14 A. No, I'm sitting there like this.
15 Q. When you say you're sitting there like this --
16 A. With my foot out the door. It happened so
17 fast, my foot was out the door.
18 Q. Well, it happened fast enough for you to be
19 able to hear the shots, look, see the man fall, see
20 another guy running off, see Charles walking, right, not
21 running, walking up alongside the passenger side?
22 A. Right.
23 Q. You see the door of the Lexus open and then see
24 Charles go around to the front of the Lexus, which would
25 be in the direction of your car?

112

1 A. Right.
2 Q. So that's when you see Charles shoot in the
3 direction of the Lexus, of the window?
4 A. Right.
5 Q. And then what do you see?
6 A. The big guy get out the car. He charged him,
7 and he was just steady shooting.
8 Q. How did the big guy charge him? And when
9 you're saying he charged him --
10 A. Charged Charles.
11 Q. And how did he do that?
12 A. Slowly. Not running real fast, but he got up
13 trying -- I believe trying to grab him or something like
14 that.
15 Q. Did you see him knock any gun out of his hands
16 or anything?
17 A. No.
18 Q. Go ahead.
19 A. After are -- I don't know where the guy went,
20 the driver -- the driver of the car went at the time;
21 but after that, Charles got in the Lexus and sped off.
22 Q. Okay. So what is it that causes you not to be
23 able to see where the driver of the Lexus goes to? You
24 see him as he kind of like -- is it a bear hug or
25 something or pushing at Chuck?

113

1 A. He could have.
2 Q. But you said you were watching the whole time.
3 A. Right.
4 Q. Can you explain how it is that you don't see
5 where he goes to?
6 A. He possibly went off to the field or something,
7 somewhere like that.
8 Q. Do you know why it is you couldn't see him
9 going wherever he went?
10 A. No, I don't.
11 Q. Isn't it because you closed your door and
12 started backing up?
13 A. No.
14 Q. Okay. Do you recall backing up very rapidly,
15 turning your cars around, and driving out?
16 A. After Charles left out, I did.
17 Q. Is it your testimony that Charles Mamou gets
18 into the blue Lexus?
19 A. Uh-huh.
20 Q. You see him close the door. You see him put
21 the car in gear, and he drives off kind of to the left
22 around your vehicle and heads out?
23 A. Yeah.
24 Q. And at that point -- I mean, is he driving off
25 at a very high rate of speed?

114

1 A. Yes.
2 Q. So you have to go from a position where you
3 were heading towards his car -- he's now taken off, and
4 you're able to turn your car around and catch up with
5 him by the point he gets to 610 and South Main?
6 A. Yeah.
7 Q. And that's a very short distance, isn't it?
8 A. That's not a short distance at all.
9 Q. You're beeping your horn at him?
10 A. No.
11 Q. You're wondering, my God, what just happened?
12 A. No. I'm paranoid at that time.
13 Q. So, why are you following him?
14 A. I'm not following him. I'm going home.
15 Q. So, as you drive, do you get on 610 at one
16 point?
17 A. Yeah.
18 Q. Do you get on 610 and take off the Braeswood
19 exit?
20 A. Right.
21 Q. And then you would be on South Braeswood
22 heading west?
23 A. Toward Fondren.
24 Q. Correct. And when you get to Fondren, Fondren
25 runs north and south, intersecting Braeswood, correct?

115

- 1 You're just south of the Braes Bayou?
2 A. Right.
3 Q. You get to Fondren. Which way do you go?
4 A. Left.
5 Q. Make a left-hand turn?
6 A. Right.
7 Q. That takes you down where you live and where
8 the Scott's live?
9 A. Right.
10 Q. You go directly home?
11 A. Yeah.
12 Q. Tell your wife what happened?
13 A. No, she was asleep at the time.
14 Q. Pretty exciting events in your life, isn't it?
15 A. Very exciting.
16 Q. You just get in bed and go to sleep?
17 A. No, I took a shower.
18 Q. Took a shower, and then got in bed and went to
19 sleep?
20 A. No, opened me a can of soda and went to bed.
21 Q. Talk to anybody that night?
22 A. No.
23 Q. Talk to Robin and Howard Scott at any point
24 after that?
25 A. No.

116

- 1 Q. Are you aware of the fact the police show up at
2 their house?
3 A. No.
4 Q. Do you call and tell them that the police are
5 looking for you?
6 A. No.
7 Q. You call and tell anybody that?
8 A. No.
9 Q. And your hope is that if you tell a story to
10 the police when they arrest you, you're not going to get
11 charged with anything?
12 A. No. My hope is that everything that happened,
13 I told the truth about.
14 Q. But you didn't, right?
15 A. I told what I saw at that time.
16 Q. But Mr. McClellan was the one who asked you
17 whether you lied?
18 A. Right.
19 Q. And you admitted to lying?
20 A. I did.
21 Q. And those lies basically kind of helped you,
22 didn't they?
23 A. I don't know. The day is not over with.
24 Q. You think you're being prosecuted for something
25 now?

117

- 1 A. I don't know. I don't know.
2 Q. Have you been concerned about that since
3 December 6th, up until today's date?
4 A. Yes, I have.
5 Q. Did you go see an attorney and ask whether or
6 not you have any exposure for this case?
7 A. No.
8 Q. Your wife's name is Janicka?
9 A. Right.
10 Q. When you were arrested, do you recall the day
11 you got arrested?
12 A. Not offhand. It was a Wednesday.
13 Q. December 9th?
14 A. It could have been.
15 Q. All right, fair enough. What time of the day?
16 A. I got off work. It was probably about 6:30,
17 7:00 o'clock that night.
18 Q. All right. And when do you recall you started
19 to go talk to the police?
20 A. When they came and got me from my house, they
21 took me down to homicide division; and that's when I
22 told the story.
23 Q. When they first came out and they introduced
24 themselves to you, did they tell you they were placing
25 you under arrest?

118

- 1 A. No.
2 Q. They just said they wanted you to come with
3 them?
4 A. Because of questioning.
5 Q. Did they tell you what the questioning was
6 about?
7 A. Yeah.
8 Q. About the killing that took place on Lantern
9 Point drive?
10 A. Yeah.
11 Q. At that point were you aware, from talking with
12 them, whether or not a young lady had been found or not?
13 A. Yeah.
14 Q. And did you know that from them or from the
15 news?
16 A. From the news.
17 Q. And was it your impression when you're talking
18 to these detectives that they're talking to you about
19 the incident that I just described; and in all
20 likelihood, the girl who's -- the reference was made to
21 on the news was perhaps the girl that was in the blue
22 Lexus?
23 A. Yeah.
24 Q. Now the first time that we're hearing any
25 reference to Mr. Mamou calling you after December 6th

119

1 and telling you to shut the hell up is today in court,
2 right?
3 A. Right.
4 Q. Didn't put that in any statement to the police?
5 A. No.
6 Q. Had you ever told Mr. McClellan that prior to
7 today?
8 A. No.
9 Q. And is today the first time that we're hearing
10 you testify that you did, in fact, see a gun with
11 Mr. Mamou?
12 A. Yes.
13 Q. And have you told Mr. McClellan that prior to
14 today?
15 A. No.
16 Q. And is today the first day we're hearing about
17 the story about the hood being raised up not being
18 correct?
19 A. Say it again.
20 Q. Is today the first day we're hearing that the
21 story about the hood on the blue Lexus being up is not
22 true?
23 A. Right.
24 Q. You pretty close friends with the Scotts,
25 Howard and Robin?

120

1 A. We're not close.
2 Q. Did you ever live together or anything?
3 A. No.
4 Q. You live close to one another, or you did?
5 A. At the time, yeah.
6 Q. Would socialize with them?
7 A. Only when we get ready to go to the movies.
8 Q. The same kind of socialization you had with
9 Shawn England?
10 A. Yeah.
11 Q. Thank you.
12 MR. MCCLELLAN: Pass the witness.
13 MR. HILL: I have nothing further, Your
14 Honor.
15 THE COURT: Ladies and gentlemen, if you
16 would, please go back in the room. We're taking you to
17 lunch. All the previous admonitions are still in
18 effect.
19 (Lunch recess.)
20 (Jury is brought in and seated.)
21 THE COURT: Please be seated.
22 Call your next witness, please.
23 MR. MCCLELLAN: State will call Howard
24 Scott.
25 THE COURT: Proceed, please.

121

1 HOWARD SCOTT,
2 having been first duly sworn, testified as follows:
3 DIRECT EXAMINATION
4 BY MR. MCCLELLAN:
5 Q. Can you state your name for the record, please?
6 A. Howard Scott.
7 Q. Mr. Scott, if you might, just lean a little bit
8 forward and kind of talk in that microphone so people
9 can hear you, okay? Mr. Scott, how are you employed?
10 A. With Southeast Keller.
11 Q. Southeast? --
12 A. Keller.
13 Q. -- Keller?
14 A. Yes, sir.
15 Q. What do you do for them?
16 A. Janitorial service.
17 Q. How old are you?
18 A. Twenty-nine.
19 Q. Are you married?
20 A. Yes.
21 Q. And who is your wife?
22 A. Robin Scott.
23 Q. Do you have any children?
24 A. Yes, sir.
25 Q. How many?

122

1 A. I have four.
2 Q. Four children?
3 A. Yes, sir.
4 Q. Okay. I direct your attention back to December
5 of 1998. Where did you live back in December of 1998?
6 A. 10800 Fondren.
7 Q. Is that in Harris County, Texas?
8 A. Yes, sir.
9 Q. Do you -- did you know back then or come to
10 know back then a person by the name of Charles Mamou,
11 also known as Chucky?
12 A. Yes, sir.
13 Q. Do you see that person in the courtroom today?
14 A. Yes, sir.
15 Q. Could you point him out and briefly describe
16 who he is or something he's wearing?
17 A. In the corner right there, burgundy shirt,
18 black suit.
19 Q. Is he a black male or white male?
20 A. Black male.
21 MR. MCCLELLAN: Your Honor, may the record
22 reflect the witness has identified the defendant?
23 THE COURT: It will.
24 Q. (BY MR. MCCLELLAN) When was the first time you
25 met Charles Mamou?